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A TREATISE

ON THE

RAILWAY & CANAL TRAFFIC ACT, 1854,

ETC.

A TREATISE

ON THE

RAILWAY & CANAL TRAFFIC

ACT, 1854,

AND ON

THE LAW OF CARRIERS

AS AFFECTED THEREBY;

With an Appendix,

CONTAINING COPIOUS REPORTS OF THE PRINCIPAL CASES DECIDED ON THE ACT.

By GEORGE BROWN.

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PREFACE.

THE want experienced by many railway officials, of a knowledge of the principles and grounds upon which the Court of Common Pleas has hitherto acted in carrying out the important Act usually known as Mr. Cardwell's Act, induced me to undertake the present work. It became necessary to introduce chapters on other topics connected with the duties of Carriers, in order properly to elucidate the bearing of the statute upon the Law of Carriers, so that not a few of the main points in that law will be found noted. The object has been, not to make a large book, but to condense as much matter as possible into a small compass. The principles laid down by the Judges have been carefully laid down in Chapters IV., V., and VI., and such observations have been founded on them as may serve to indicate the probable course of the Court in future cases. In order to enable the reader to see the whole circumstances and effect of the decisions—copious reports of the leading cases have been given in the appendix.

G. B.

Barnard Castle, 6th July, 1859.

CONTENTS.

Table of Cases.....page vii
Errata, &c. ..... " viii

CHAPTER PAGE

I.—General Responsibility of Companies..... 1
II.—Limitations of Liability, independently of the Carriers' Act, the Railway Traffic Act, or Contract..... 3
III.—Protection by Arrangement or Notice..... 9
IV.—Special Provisions of the Traffic Act, as to Notices and Special Contract 14
V.—Reasonable Facilities and Undue Preference..... 19
VI.—Remarks on the further application of the Act..... 38
VII.—Canal and Inland Water Carriers..... 46
VIII.—Remuneration, Lien, and Special Provisions thereon 51
IX.—Adverse Title, Stoppage in Transitu, and Special Provisions thereon in Contracts..... 55

APPENDIX.—Cases .....*pages* i to xxv.
Statutes ..... " xxv to xc.
Regulæ Generales ..... " xc to xcii.
Forms ..... " xcii to end.

TABLE OF CASES.

Austin v. Manchester, &c. page 10
Appenheim v. Russel . . 54

Briddon v. Great Northern . 3
Bremer v. Williams . . 4
Batson v. Donovan . . 4
Bason v. Sandford . . 4
Beck v. Evans . . 6
Bull v. Robinson . . 6
Burrell v. North . . 7
Butler v. Bazan . . 7
Buckman v. Levy . . 7
Brind v. Dale . 7, 46
Butcher v. Lon. & South Coast . 8
Bodenham v. Bennet . 9, 12
Birkett v. Willan . . 9
Brooks v. Pickford . . 9
Baxendale v. Hart . . 10
Butt v. The Great Western . 11
Beadell v. Eastern Counties . 21
app. xxvi.
Barker v. The Midland . 21
Baxendale v. G. Wstn. 27, 29, 34, 41, 44
app. li, lix.
Baxendale v. North Devon . 33
app. lvi.
Baxendale v. Eastern Counties . 34
app. xx.
Barrett v. Gt. Northrn. & Midland 36
app. lxvii.

Crouch v. London & N. W. 1, 2, 5, 19
Collins v. Bristol & Exeter . 2
Christie v. Griggs . . 4
Crofts v. Waterhouse . 4
Carpue v. London & Brighton . 4
Coppin v. Braithwaite . . 5
Covington v. Willan . . 11
Chippendale v. Lanc. & Yorks. . 17
Cooper v. London & S. W. . 34
app. lxii.
Caterham R.C. v. Lond. & Brighton R.C. and South Eastern R.C. . 37
app. lxxi.
Crouch v. Great Northern . 52
Crawshaw v. Homfray . . 53
Chase v. Westmore . . 53
Cheeseman v. Exall . . 56

Davison v. Gwynne . page 6
De Rothschild v. Royal Mail . 11
Davis v. Garret . . 12
Dale v. Hull . . 46

Edwards v. Gt. Western 2, 19, 52
East India Co. v. Pulleine . 7
Ellis v. Turner . . 12

Fowles v. Great Western . . 2
Forward v. Pittard . 3, 46
Farrer v. Adams . . 6

Gilbert v. Dale . 2, 7
Grote v. Chester & Holyhead . 4
Gibbon v. Paynton . . 6
Galway v. Hollower . . 7
Gt. Northern R.C. v. Sheppard 8
Great Western v. Goodman . 8
Great Western v. Rimel . . 11
Garnett v. Willan . . 12
Gaston v. Bristol & Exeter . 18
app. xix.
Garton & another v. Gt. Westn. 36, 44
app. lxv.

Hawkes v. Smith . . 2
Harris v. Packwood . 4, 51
Hyde v. Trent & Mersey Nav. . 7
Hinton v. Dibden . 11, 12
Hearn v. London & S. W. 12, 12
Hudson v. Baxendale . . 18
Harris v. Cockermouth & Workington Railway Company . 26, 41
app. xlv.
Holderness v. Collinson . . 53

Jones v. Boyce . . 4
Johnson v. Midland . 4, 51

Kewzig v. Eggleston . . 6

Lovett v. Hobbs . page 4
Laveroine v. Drury . . 6
Lyon v. Mells or Mellor . 9, 46
Langley v. Brown . . 9
London & N. W. v. Dunham app. iv
Leuckhart v. Cooper . 53, 54
Laclough v. Towle . . 55
Lickbarrow v. Mason . . 57

Muschamp v. Lanc. & Preston . 1
MacAndrew v. Electrical T.C. . 2
Martin v. Great Northern . 4
Mayhew v. Earnes . . 6
Morville v. Great Northern . 10
Metcalfe v. Lond. Brighton & S.C. 11
Machin v. London & S. Western . 11
MacManus v. Lanc. & Yorks. . 17
app. viii.
Marriott's case . . 21
app. xxii.

Nicholson v. Great Western 31, 33
app. xxxix.

Owen v. Burnett . . 9
Oxlade v. North Eastern . 24, 41
app. xxix.
Oppenheim v. Russell . . 54
Ogle v. Atkinson . . 55

Painter's Case . . 22
Parker v. Gt. Western 2, 19, 51, 52
Pigott v. Eastern Counties . 4
Pickford v. Grand Junc. 4, 51, 52
Prendergast v. Compton . . 5
Paddington v. South Wales 15, 17
app. vi.
Peake v. North Staffordshire 15, 17
app. xi.

Rigby v. Hewett . . 4
Richards v. Lond. & South Coast 8
Rowley v. Horne . . 9
Reg. v. Grand J. Canal . . 20
Ransome v. Eastern Counties 23, 26
app. xxvii, xxxiv.
Ransome & Peard v. Ditto . 30
Ruabon Coal case . 31, 32
app. xxxix.
Rich v. Kneeland . . 46
Richardson v. Sewell . . 46
Rushforth v. Hadfield . . 53
R. v. Frese . . 53

Scotham v. South Staffordshire page 1
Skinner v. Lond. & Brighton 4
Ditto v. Upshaw . . 52
Sharp v. Gray . . 4
Story on Bailments . 5, 6, 56
Stuart v. Crawley . . 6
Slim v. Great Northern . . 7
Smith v. Horne . . 9
Sleat v. Fagg . 9, 12
Stephenson v. Hart . . 9
Ditto v. Blakelock . . 53
Shaw v. York & North Midland . 10
Simons v. Great Western R.C. 15, 18
app. ii.
Simons v. Great Western 16, 17
app. ii.
Sutton v. Mitchell . . 46
Statute.—1 W. 4, c. 68, pages 9, 12, 13, 47, 48, app. lxxix.
———17 & 18 Vic. c. 31, Traffic Act, pages 10, 12, 13, 15 to 38, 50 app. lxxv.
———1 & 2 W. 4, Interpleader Act, 56
———8 & 9 Vic. c. 42, pages 48, 49 app. lxxxiv.
———8 & 9 Vic. c. 28, pages 48, 49 app. lxxxv.
———8 & 9 Vic. c. 20, page 19
Scott v. Lowes . . 56
Sheridan v. New Quay Co. . 56

Titchburn v. White . . 6
Tyley v. Morice . . 6
Taff Vale v. Giles . . 7
Trent Navigation v. Wood . 46

Watson v. Ambergate, &c. . 1
Wyld v. Pickford . 4, 9
Walker v. Jackson . . 6
White v. Humphrey . . 6
Wise v. Great Western . . 15
app. i.
White v. Great Western . . 17
app. lxxiv.
Williams v. Lloyd . . 46
Wiggins v. Brotherton . . 53
Wilson v. Anderton . . 55
Whitehead v. Anderson . . 57

Yk. Newcstl. & Berwk. v. Crisp . 4
York v. Greenhaugh . . 53

ERRATA, &c.

For "Great Northern," third line of page 17, read *Great Western*.
For "North Eastern," in 18th line of page 23, read *Eastern Counties*.
After 10th line on page 13, add "See remarks, page 44 post."

A TREATISE, &c.

CHAPTER I.

GENERAL RESPONSIBILITY OF CARRIERS.

Railway Companies who act as Carriers, and have not legally limited their responsibility, are to be treated as common Carriers in respect of the goods they profess to carry upon their line, and (in the absence of some contract limiting liability) impliedly insure their safe delivery and conveyance to the consignee, unless destroyed or damaged by the act of God or the King's enemies. This liability extends not merely over their own line of Railway, but if they take goods to convey to parties distant from their own terminus delivering them to other Carriers or Railway Companies to be forwarded, the receiving Company is liable for the whole distance, even if the loss or injury do not happen upon their own line of Railway. (*Muschamp* v. *Lancaster and Preston Junction R. C.* 10 L J. Exch. 460, 8 Mee. and W. 421; *Watson* v. *Ambergate &c. R. C.* 15 Jur. 448; *Crouch* v. *London and North Western R. C.* 23 Law J. C. P. 73, 14 C. B. 259; *Scotthom* v. *South Staffordshire R. C.* 22 Law J. Rep. Exch. 121. Where the Carrier by special

General liability as Carriers.

Liability beyond terminus of Line.

contract expressly engages to carry to the terminus of his own line *only*, and there to transfer the goods to an ulterior Carrier, the first Carrier will not be answerable for what happens to the goods whilst in the hands of the ulterior Carrier. (*Fowles* v. *Great Western R. C.* 22 Law J. Rep. 76 Exch.; *Collins* v. *Bristol and Exeter R. C.* 26 Law J. Rep. Exch. 103, 11 Exch. Rep. 797). The Company cannot force an unreasonable special contract on the employer, but must receive and carry such goods as they are empowered to carry, profess to take, or are in the habit of carrying, and have reasonable accommodation for; treating all persons (cæteris paribus) upon the same terms and at the same rate. (*Parker* v. *Great Western R. C.* 7 Man. and G. 253, 292; *Edwards* v. *Great Western R. C.* 11 C. B, 588; 17 and 18 Vic. c. 31, s. 2; *Mac Andrew* v. *Electric Telegraph Co.* 17 Com. B. 11; *Crouch* v. *London and North Western R. C.* ante). And this duty extends to the *safe delivery* to the consignee or his agent. It is sufficient prima facie evidence of non-delivery to shew that the goods have not reached the consignee (*Gilbert* v. *Dale*, 5 Ad. and E. 543); and proof that the weight or amount of goods delivered to the consignee is less than the amount or weight of goods delivered to a Carrier is sufficient prima facie evidence to charge the latter for the deficiency, or to call upon him to shew that it did not arise from his negligence (*Hawkes* v. *Smith*, C. and M. 72).

Cannot demand unreasonable terms.

CHAPTER II.

LIMITATIONS OF LIABILITY, INDEPENDENTLY OF THE CARRIERS' ACT, THE RAILWAY TRAFFIC ACT, OR OF CONTRACT.

The limitations of a carrier's common law liability to receive and carry, and to ensure the safe transit and delivery to the consignee against all risks, are numerous. Some of the principal modifications are as follow:—

1. Such insurance does not extend to loss arising from the act of God, and the King's enemies.

The Act of God. The King's Enemies.

Act of God.—It must be the act of God, as distinguished from the act of man. Thunderstorms, earthquakes, hurricanes, snowstorms, and unusually violent tempests, or any other inevitable atmospheric or physical cause would be deemed an act of God, and excuse him; but the breaking down of a bridge, or fire, or violence of robbers, would not. Delay or loss arising from a snowstorm would be held excusable, on the authority of *Briddon* v. *The Great Northern R. C.* 32 Law J. rep. 94.

Acts of King's enemies are strictly confined to acts done by a nation with whom England is at war, and does not include piracies, robberies, riots, nor violence of mobs, altho' armed (*Forward* v. *Pittard*, 1 T. R. 27).

2. The courts have recognised a distinction between the liability of carriers, especially railway companies, as regards goods and passengers.

Distinction between Goods and Passengers.

The carrier only insures the latter as far as reasonable care and foresight can do so, and is only liable for negligence. (*Christie* v. *Griggs*, 2 Camp.; *Crofts* v. *Waterhouse*, 11 Moore, 138; *Carpue* v. *London and Brighton R.C.* 5 Q.B. 747; *Skinner* v. *Same*, 5 Exch. 789; *Rigby* v. *Hewett*, 5 Exch. 240; *Grote* v. *Chester and Holyhead R. C.* 2 Exch. 251). But even as to passengers, Railway Companies are bound to provide safe carriages (*Sharp* v. *Gray*, 9 Bing. 457; *Bremer* v. *Williams* 1 C. & P. 414), and such engines, drivers, breaks, bridges, way, station and other lights as are safe and necessary (*Martin* v. *Great Northern R. C.* 16 C. B. 179, 24 Law J. C. P. 209; *Crofts* v. *Waterhouse*, 3 Bing. 321; *Jones* v. *Boyce*, 1 Stark, 493; *Grote's Case*, 2 Exch. 251), and the onus of finding ground for discharge lays upon the Company (*Carpue's Case*, ante; *Pigott* v. *Eastern Counties R. C.* 15 Law J. C. P. 235; *Skinner* v. *London, Brighton, &c. R. C.* 5 Exch. 787).

Want of room—goods not usually taken—refusal of rate, &c.

3. He is relieved from all liability for refusing to accept, where he has not convenience to carry the goods, (*Johnson* v. *Midland R. C.* 4 Exch.; *Lovett* v. *Hobbs*, 2 Show. 127; *Batson* v. *Donovan*, 4 B. and Ald. 28, 32), or to carry valuable goods with security, or if he has not usually carried, or held himself out to carry, a particular kind of traffic (*York, Newcastle, and Berwick R. C.* v. *Crisp*, 14 C. B. 529; *Johnson* v. *Midland R. C.* 4 Exch., 367), or if they be offered to him at an unreasonable time, or before he is ready to convey them (*Pickford* v. *Grand Junction R. C.* 12 M. and W. 766), or with a refusal to pay a reasonable price for carriage (*Harris* v. *Packwood*, 3 Taunt. 264; *Batson's Case*, ante; *Wyld* v. *Pickford*, 8 M. and W. 443, 458; *Basan* v. *Sandford*, 1 Show. 327; *Pickford* v. *Grand Junction*, 8 M. and W. 372, 399).

4. Although a Carrier cannot refuse goods

of the class he professes to carry, nor passengers if he ordinarily carries passengers, yet he may decline to receive persons in a state of mental or bodily disease, drunkenness, persons of ill-fame, or in the case of Railways, who persist in smoking (*Story on Bailments*, s.s. 591, 591a); but if the Company take the fare of and admit any persons of ill-character, who nevertheless do not misconduct themselves during the journey, they cannot turn them out (*Coppin* v. *Braithwaite*, 8 Turner, 875; *Pendergast* v. *Compton*, 8 Jurist, 454.)

Diseased persons, Criminals, Dangerous goods, &c.

Railway Companies may refuse dangerous articles, as Aquafortis, Gunpowder, Oil of Vitriol, Lucifer Matches; and any persons sending such without marking their nature on the package, or otherwise giving notice in writing of their contents to the Book-keeper, or other servant of the Company with whom the same is left at the time of sending, shall forfeit to the Company £20. for every such offence; and the Company may require packages suspected to contain such articles to be opened to ascertain the facts (8 and 9 Vic. c. 20, s. 105).

If a parcel, however, does not contain such articles, or any of the goods mentioned in the Carriers' Act, 1 Wm. 4, c. 68, and the Railway and Canal Traffic Act 1854, there is no necessity to inform him, but he cannot insist upon being informed of their contents before accepting them (*Crouch* v. *London & North Western R. C.* 2 C. Law Rep. 210, 23 Law J. C. P. 73). He can demand the opening of a package if he suspects it to contain the dangerous articles referred to in 8 and 9 Vic. c. 20, supra; but in other cases he must be content with the limitation of liability given him by statute or otherwise, if he be deceived.

5. He is not liable for the loss or injury to goods in respect of which fraud or deceit is practised on him by the vendor—for in-

Fraud and deceit.

stance, if the real value of goods be misrepresented, or fraudulently concealed from him, whereby he is induced to consider them of trifling value (*Kewzig* v. *Eggleston*, Alexan. 93; *Titchburn* v. *White*, 1 Stra. 145; *Gibbon* v. *Paynton*, 4 Burr. 2298; *Mayhew* v. *Earnes*, 3 B. and C. 601; *Walker* v. *Jackson*, 10 M. and W. 161; *Tyley* v. *Morice*, Carth. 485).

Imperfect packing, &c.

6. He cannot be called upon to pay for injury arising from the imperfect packing of goods, or the insufficient securing of animals, unless he has the means of observing these, on or before acceptance of the goods, or is informed thereof; but if a cask of liquor leak during the journey, he should endeavour to do what he reasonably can to prevent as much of the leakage as possible (*Beck* v. *Evans*, 16 East. 244; *Stuart* v. *Crawley*, 2 Stark. 323).

Damage by natural deterioration, vermin, &c.

7. A Carrier is not liable for losses arising from the ordinary deterioration of goods in quantity or quality in the course of carriage, or from inherent infirmity or tendency to decay, or which arises from the neglect or default of the consignor; though the Carrier knowing the goods and their tendency, must do what he can to preserve them by airing, ventilation, stopping leakage, or whatsoever else is reasonably within his power (*Farrer* v. *Adams*, Bull. N. P. 69; *Bull* v. *Robinson*, 24 Law J. Exch. 165; *Beck* v. *Evans*, 16 East. 144; *Davison* v. *Gwynne*, 12 East. 381).

But a Carrier is liable to damage arising from goods entrusted to him being injured whilst in his care by rats or other animals or vermin (*Laveroine* v. *Drury*, 8 Exch. 163; *White* v. *Humphrey*, 11 Q. B. 43; *Story on Bailments*, s. 513).

8. So far as they limit their liability, Railway Companies must be proceeded against as special Carriers for hire and not as common Carriers.

9. Of course in all cases of alleged liability

it is presumed that the articles are properly entrusted to the Carrier's care; and they must be delivered to the Carrier, or some person who can be proved to be his servant or agent, for the purpose. A delivery of a parcel at any office, warehouse, or receiving house, used or appointed for the receiving of the parcels, is sufficient under the Carriers' Act to render the Carrier liable for its loss or injury if the nature and value are declared; so is delivery to a servant by the Carrier on the road, or his book-keeper, and the porters. Warehouse receivers, and the officials at a Railway Station, would be generally considered persons to whom a good delivery might be made, unless the parties knew that the course of business of the Company was to the contrary; for instance — where a Company notified that they would not carry cattle unless a ticket were attached signed by their clerk, it was held that a porter had not authority to receive without giving such signed tickets, and that where he did so the Company was not liable for the loss of cattle so received from parties acquainted with the notice (*Slim* v. *Great Northern R. C.* 2 Com. Law Rep. 864, C. B. 14, C. B. 647; *Taff Vale R. C.* v. *Giles*, 2 Ell. and B. 823; *Hyde* v. *Trent and Mersey Navigation C.* 5 Term Rep. 389; *Gilbard* v. *Dale*, 5 Ad. and E. 543; *Burrell* v. *North*, 2 Carr and P. 281). But the Carrier is not held responsible where the goods are given to the servant for his own private gain (*Butler* v. *Bazan*, 2 C.P. 213); or merely left at an inn-yard whence the Carrier set out, or left at a wharf (*Galway* v. *Hollower*, 1 Lord Raymond, 46; *Buckman* v. *Levy*, 3 Camp. 414); and the Carrier will be exempt if the owner specially undertake to watch the goods, or refuse to place confidence in the Carrier in the matter (*Brind* v. *Dale*, 2 M. and W. 275; *East India Co.* v. *Pulleine*, 1 Stra. 690). This

Delivery in an unauthorized manner.

Passengers' Luggage.

does not however apply to relieve the Carrier from responsibility as to the luggage of a passenger, even though under his seat (*Great Northern R. C.* v. *Sheppard*, 8 Exch. 30; *Richards* v. *London and South Coast R. C.* 7 C. B. 839; *Great Western C.* v. *Goodman*, 21 Law J. C. P. 197.

A Railway Company has been held liable for the loss of a dressing case, and in another instance of a money-bag containing money and valuables to the amount of £289. which had been kept in the hands of the passenger during the journey, but at the terminus entrusted to a porter to put into a cab, and this liability was fixed upon the Company on proof that it was the usual course of the Company for their porters to assist passengers in getting their luggage into cabs, so that it was assumed that the duty of Carrier did not end until all the things were in the cab (*Richards* v. *The London and South Coast R. C.* 18 Law J. C. P. 251. and 7 C. B. 839; *Butcher* v. *same*, 24 L. J. C. P. 137). In the latter case the advocates of the Company seemed to have laid no stress on the Carriers' Act which requires the amount of such valuables to be disclosed and an extra rate paid thereon, which, if insisted upon, must, it is submitted, have been fatal to the plaintiff's case. In all cases Railway Companies can readily free themselves from this liability by express arrangement.

10. A Carrier is exempt from responsibility for merchandise or goods carried by a passenger as his personal luggage, unless it is obviously packed as luggage, and the Company with a full knowledge treat it as luggage (*The Great Northern R. C* v. *Sheppard*, 8 Exch. 30, 21 L. J. Exch. 281).

CHAPTER III.

PROTECTION BY ARRANGEMENT OR BY NOTICE.

I. Before the Carriers' Act.

A carrier might protect himself by making with the sender a special contract limiting his liability. And a notice limiting the carrier's liability, personally served upon the sender, previous to or at the time of his sending the articles, or even such a knowledge of any public notice by which the carrier limited his liability as would justify a judge or jury in finding that the sender knew of it at the time, made the delivery an implied assent to the terms of the notice, and constituted a special contract according to the terms of the notice between him and the carrier (*Rowley* v. *Horne*, 3 Bing. 2; Baron Parke, in *Wyld* v. *Pickford*, 8 M. & W. 460). Such a notice would not protect him, however, where he had been guilty of gross negligence or misfeazance (*Bodenham* v. *Bennet*, 4 Price, 31; *Smith* v. *Horne*, 8 Taunt. 144; *Birkett* v. *Willan*, 2 B. & Ald. 356; *Sleat* v. *Fagg*, 5 B. & Ald. 342; *Owen* v. *Burnett*, 4 Tyr. 133, S. C.; *Wyld* v. *Pickford*, 8 M. & W. 443; *Lyon* v. *Mells*, 5 East. 428; *Brooks* v. *Pickford*, 4 Bing. 218; *Langley* v. *Brown*, 1 Moo. & P. 583; *Stephenson* v. *Hart*, 4 Bing. 476).

II. Since the Carriers' Act, 11 G. 4, and 1 W. 4, c. 68. (23rd July, 1830).

Liability may still be limited by special con-

tract. And such a contract may be by express agreement, or it is presumed, if the sender entrust goods to a carrier after he has been personally served with or received a written or printed notice of the terms limiting the liability, but no public notice (sec. 4 of Act) is available even if it be proved to have come to the sender's knowledge. The subsequent statute, 17 and 18 Vic. c. 31, has made a signed contract with reasonable terms necessary if protection is sought to be extended to the carrier's negligence.

Special contracts under the 6th section of the Act might be made, which would protect the Company against all damage, even where it was caused by the gross and culpable neglect of the carrier or his servants; as where a carriage containing a horse was negligently run against another carriage, and where the accident occurred from not greasing the wheels of a horse box (*Morville* v. *The Great Northern R. C.* 19 Law J. 140 Q. B.; *Austin* v. *Manchester, &c. R. C.* 10 Com. B. 454; 16 Q. B. 600 S. C.; *Shaw* v. *York & N. Midland R. C.* 13. Q. B. 347).

A carrier by the carriers' act is exempt from liability for loss or injury to goods there specified, where the value exceeds £10. unless at the time of sending, the value thereof be declared, and an increased rate paid thereon; and every carrier is at liberty by notice affixed in legible characters to some conspicuous part of his booking or receiving offices, to state these increased rates; and the senders of such articles are bound by same, without further proof of it having come to their knowledge. But the absence of this notice merely deprives the carrier of the increased charge, and he is still exempt from liability if the value of the goods is not declared wherever the goods are delivered to the carrier, even if on the road. If the carrier refuses to give a receipt, he loses the protection of the statute. (Sec. 3 Carriers' Act; *Baxendale* v. *Hart*, 6 Exch. 769; 21 Law J. Exch. 123).

If the value of goods of the kinds enumerated in the Act be not declared at the time, where the value is above £10. and the increased rate paid thereon according to the carrier's notice, the carrier is not liable for their loss or injury, even where it takes place through his own neglect; and the terms "loss or iujury" extend to loss by robbery or thiev es (*Covington* v. *Willan* Gov. 155; *De Rothschild* v. *Royal Mail S.P.C.* 7 Exch. 734).

It was solemnly decided by the Court of Queen's Bench, after elaborate argument, in *Hinton* v. *Dibden*, 2 Q. B. 646, that a carrier protected by the statute (that is where the value has not been declared, &c.) is not liable even for damage caused by gross negligence, nor loss or injury by robbery (*Covington* v. *Willan*, Gov. 155; *De Rothschild* v. *Royal Mail S. P. C.* 7 Exch. 734); but he is liable for the felonious act of his own servant. (*Metcalfe* v. *London, Brighton, and South Coast R. C.*, Law J. vol. 27, C. P. 205; *Great Western R. C. and Rimel*, 27 Law J. C. P. 201). An ordinary bailee is not liable for the felonious act of his servant, unless he has himself been guilty of gross negligence, therefore where the carriers were sued not as common carriers, but under a *special* contract to carry, and pleaded non-declaration of value as a defence under the statute; the plaintiff to get rid of that defence must shew not only the felonious act of the carrier's servant, but that it arose from the defendant's negilgence. (*Butt* v. *The Great Western R. C.* 11 C. B. 140; and 20 Law J. 241 C. P.; see also *Machin* v. *London and South Western R. C.* 2 Exch. 415, and 17 Law J. 271).

In *Hearn* v. *London and South Western R. C.* 24 Law J. 181 Exch., where the owner did not communicate the value of the parcel, but relied entirely upon a loss caused by delay in delivery, the protection of the statute was held not to apply. The damages contemplated by this

statute seem only damages arising from loss or injury of the articles themselves, not loss or damage created by their improper detention (*Hearn* v. *London and South Western R. C.*) by their being forwarded by the carrier by a different and unauthorized carrier to that selected by the sender (*Garnett* v. *Willan*, 5 B. and Ald. 53; *Sleet* v. *Fagg*, 5 B. and Ald. 342); or loss or injury arising from their being sent out of the usual route, (*Davis* v. *Garret*, 6 Bing. 716); or beyond their place of destination (*Hinton* v. *Dibden*, 2 Q. B. 646; *Ellis* v. *Turner*, 8 Term R. 531; *Bodenham* v. *Bennet*, 4 Price, 41.)

In other words the statute protects the carrier from liability for the loss or injury to the enumerated articles. The term "loss" in the Act, means loss of the article, not consequential loss to some person by its detention; and in like manner the term "injury" means injury to the article, not injury which may be sustained by some individual by the delay of its transmission.

The Carriers' Act and the above observations apply equally to the luggage of a passenger as to goods sent separately (*Hearn* v. *London and South Western R. C.* 10 Exch. 793, 24 Law J. Exch. 180.) See also the remarks as to luggage ante pages 7 and 8.

As to the damages, the plaintiff having declared value may recover (not declared damages) but the actual proved value, which proof the carrier can demand. The increased carriage rate paid to the carrier may be recovered back (sec. 7 and 9).

III. Since Railway and Canal Traffic Act, 17 and 18 Vic. c. 31, sec. 7 (10th July, 1854).

The Carriers' liability may be limited.

1. By notice delivered to the party before or at the time of sending, but such notice (unless signed by sender as a special contract) whilst protective as to other matters therein provided, will be no protection as against the *negligence, default, or misfeazance of the carriers or their*

servants. It must be borne in mind that notices limiting liability duly served, according to the carriers' Act, are still operative in all cases except those of negligence, default, or misfeazance on the part of the carrier or his servants. The Railway and Canal Traffic Act only requires signed contracts with reasonable conditions therein, if protection is to be extended to the *negligence* or default of the carrier or his servant.

2. By conditions or special contracts—in both cases to be signed by the party and to be just and reasonable in the opinion of the judge or court trying the cause—these may extend protection even to the negligence of the carrier.

3. By default of sender to declare the value of the goods according to 1st section of carriers' Act, 1 Wm. 4, c. 68, so that the preceding remarks on this head are still applicable.

4. The price to be paid as damages for loss or injury of live stock is limited. (See next chapter, and Act in appendix).

CHAPTER IV.

SPECIAL PROVISIONS OF THE RAILWAY AND CANAL TRAFFIC ACT, AS TO NOTICES AND CONTRACTS.

It will probably best preserve the continuity of the foregoing remarks if we notice here the terms of the 7th section of the Railway and Canal traffic act as bearing more immediately upon the matters named in the last chapter.

The section is as follows; viz.—

"Every such company as aforesaid shall be liable for the loss of, or for any injury done to, any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such iability; every such notice, condition, or declaration, being hereby declared to be null and void; provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried to be just and reasonable: provided always, that no greater damages shall be recovered for the loss of, or for any injury done to, any of such animals, beyond the sums hereinafter mentioned; (that is to say,) for any horse, fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared which to be respectively of higher value than above mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby

occasioned, a reasonable per centage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge, and such per centage or increased rate of charge shall be notified in the manner prescribed in the statute eleventh George Fourth and first William Fourth, chapter sixty-eight, and shall be binding upon such company in the manner therein mentioned: provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury; provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid, shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage: provided also, that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said act of the eleventh George Fourth and first William Fourth, chapter sixty-eight, with respect to articles of the descriptions mentioned in the said act."

Difference between Condition and Contract

One of the most important questions upon this section arises out of the distinction between "conditions" and special contracts. At first view it would appear as if the difference was considerable—that whilst a condition imposed by the company in their notices must be reasonable in the opinion of the Court or Judge; yet if special contract between a railway company and any person or corporation were made and signed, such a contract was binding whether its conditions were reasonable or otherwise. The court of Exchequer held this view in the case of *Wise* v. *The Great Western R.C.* 1 H. & N. 63, 25 Law J. Exch. 258; and in *Paddington* v. *The South Wales R.C.* 1 H. & N. 392, it is evident that Barons Martin and Bramwell continued of the same opinion.

The court of Common Pleas, in *Simons* v. *The Great Western R.C.* app. Dunham resp. 18 C.B. 805, 826; and the court of Queen's Bench in the case of *Peake* v. *The North Staffordshire R.C.* 32 L.J. Repts. 30, held that condition and special

contract meant one and the same thing, and that both are void unless they are signed by the party, and unless they are also just and reasonable in the opinion of the court or judge trying the case. Erle J. dissented from the opinion expressed by the court of Queen's Bench in Peake's case, and thought that a Company could still protect themselves by special conditions, provided such conditions were just and reasonable; but that if a signed special contract existed between the sender and the Company, it was absolutely binding, whether its stipulations were reasonable or not.

The result of the existing decisions of the court of Queen's Bench and court of Common Pleas, on the subject, may be fully summed up in the language of Jervis C.J. :—" General notice to limit the liability shall be null and void; but the parties may make special contracts with the Company themselves, provided those contracts are adjudged by the court or judge to be just or reasonable. And whereas on the one hand you complain that the monopoly of the Company compels the public willingly or unwillingly to carry by that particular conveyance, and to be driven into contracts, we will give them the security of the courts to take care that the contracts which are made under this species of compulsion are just and reasonable." (*Simons* v. *Gt. Western, London & North Western, & Dunham.* Appendix).

What, then, are just and reasonable conditions, such as the Court will allow?

The following are instances of REASONABLE CONDITIONS, viz. :—

Reasonable Conditions.

1. That goods carried under *special* mileage rates, must be loaded and unloaded by the owners or their agents, and the Company will not be responsible for any risk of stowage, loss or damage, however caused, nor for discrepancy in the delivery as to either quantity, number, or weight; nor for the condition of

articles so carried; nor for detention or delay in the conveying and delivering of them, however caused. (*Simons* v. *The Great Northern R.C.* 26 L.J. Rep. C.P. 257. See Appendix).

2. That the Company will not be answerable for loss or injury to articles (such as marbles, musical instruments, glass, furniture, toys, &c.) which from their brittleness, fragility, delicacy, or liability to ignition, were more than ordinarily hazardous, unless declared and insured according to value. (*Peake's* case, 27 L.J. Q.B. 465. See Appendix).

3. That the Company would not be liable for loss of market, or other claim arising from detention of train, whether at starting or at any of the stations, or in course of the journey. (Channel B. in *White* v. *The Great Western R.C.* 26 L.J. Rep. C.P. 158. See Appendix).

4. As to live animals, that the Company are to be held free from all risk and responsibility in respect of any loss or damage arising on the loading or unloading, from suffocation, or from being trampled upon, bruised, or otherwise injured in transit, from fire, or any other cause whatever. (*Paddington* v. *South Wales R.C.* 27 L.J. C.P. 105).

5. Horse carriage and Dog ticket. This ticket is issued subject to the owner's undertaking all risks of conveyance whatever, as the Company will not be responsible for any injury or damage (howsoever caused) occurring to horses, carriages, or live stock of any description, travelling upon the Lancashire and Yorkshire Railway, or in their vehicles. (*Mac Manus* v. *The Lancashire and Yorkshire R.C.* 4 Jur. N.S. part 1, p. 144; 27 L.J. Exch. 201. See Appendix.)

It may be observed that conditions like those noticed under articles 4 and 5, extend to cover defects in trucks and horse-boxes. (*Chippendale* v. *Lancashire and Yorkshire R.C.* 21 L.J. 1106 Q.B, and *Mac Manus'* case, cited before).

6. That the Company would not be answerable for *injury* to goods improperly packed (*Simons* v. *The Great Western R.C.* ante).

N.B.—The notice that the Company would not be answerable for LOSS of a package improperly packed, was deemed unreasonable.

7. That the Company would not be answerable for loss or injury arising from inherent defect and imperfect securing of articles by the sender, which necessarily lead to the loss or injury of the article;—for instance, imperfect bunging of or otherwise securing a cask, by which leakage might arise during transit. (*Hudson* v. *Baxendale*, 2 H. & M. Exch. R. 575).

The subjoined are instances of UNREASONABLE CONDITIONS:—

Unreasonable Conditions.

1. That the Company would not be answerable for the loss of packages improperly packed (*Simons* v. *Great Western R.C.* ante); for, although a notice that the Company would not be answerable for injury or waste of contents consequent upon imperfect packing, is reasonable, why should the whole package itself be lost? (*Simons* v. *Great Western R.C.* ante).

2. That 50 per cent extra on the ordinary rates shall be paid upon all packed parcels—that is, packages of common carriers containing several parcels of different persons' packed together. (*Gaston* v. *Bristol & Exeter R.C.* L.T. Rep. vol. 32, p. 284).

CHAPTER V.

REASONABLE FACILITIES AND UNDUE PREFERENCE.

The clause in the Railway and Canal Traffic Act upon this subject is no novelty. It is to a great extent a republication, with additional sanctions, of old principles. At Common Law, a common carrier was not allowed to make personal distinctions, but was bound to receive and carry for all persons alike, upon the same terms and rules and at the same rate. *Parker* v. *The Great Western R.C.* 7 Man. and G. 253, 292; *Edwards* v. *The Great Western R.C.* 11 C.B. 588; *Crouch* v. *London & North Western R.C.* 2 Com. L. Repts. 188, 14 C.B. 255.

There is a provision in the Railway Clauses' Consolidation Act (8 & 9 Vic. c. 20, s. 90) applicable to all railways formed since 8th May, 1845, which is based upon the same principle. It is as follows:—

"Whereas it is expedient that the Company should be enabled to vary the tolls upon the Railway, so as to accommodate them to the purposes of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly either in the hands of the Company or of particular parties:" enacts that—

"It shall be lawful for the Company, subject to the provisions and limitations herein, and in the special Act contained, from time to time to alter or vary the tolls by the special Act authorised to be taken, either upon the whole or any portion of the Railway, as they shall think fit: provided that all such tolls shall be charged equally to all persons, and after the same

rate, whether per ton, per mile, or otherwise in respect of all passengers, and of all goods and carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the same line of railway, under the same circumstances: and no reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the railway:" (See *Reg.* v. *Grand Junction Canal Company*, 3 Rail. Ca. 14).

The second section of the Railway and Canal Traffic Regulation Act is as follows:—

"Every Railway Company, Canal Company, and Railway and Canal Company, shall according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such Companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic in any respect whatsoever; nor shall any such company subject any particular person or company, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and every railway company and canal company, and railway and canal company having or working railways or canals, which form part of a continuous line of railway or canal, or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies be at all times afforded to the public in that behalf."

In order to ascertain the principles which have governed the Court in carrying out the second section of the Act of Parliament, it will be necessary to notice the leading cases upon it.

Amongst the earliest we may notice those relations to the admission of Omnibusses and Vehicles within the yard and precincts of

the Railway Station. It is obvious, that in such matters, regard for order as well as for the interests of the companies, and the due transaction of their business, alike require that a reasonable amount of discretion should be reposed in them, and the courts seem disinclined to interfere unless a good ground of *public inconvenience*, arising from the exclusion, or a considerable public advantage from the proposed admission be proved. It is plain that there must be many cases where the number of such vehicles admitted within a station ought to be limited, however injurious such limit may be to the private interests of a particular omnibus proprietor.

Exclusion of Omnibusses, &c., from precincts of Stations.

In *Marriott's* case (Law J. vol. 26, N.S. C. P. 185; Law Times R. vol. 28, 305) passengers arriving by his omnibus from Hampton Wick, Twickenham, and other places, were excluded from the station yard, and subject to the inconvenience of being set down, in all weather, outside the gates, and having to walk and carry their luggage thence up to the station, whilst passengers arriving from other places by another coach were admitted up to the door of the booking office. It was not shewn that there was any want of room in the precincts of the station, nor any public benefit or other circumstances in favour of the exclusion. Here relief was granted and an order made to admit the vehicles.

In the case of *Beadell* v. *Eastern Counties R. C.* (Law J. Rep. vol. 26, N.S. C. P. 250) no such public inconvenience was shewn, the only case of the applicant being that he was *not* allowed to stand in the station and ply for hire. The applicant was therefore refused the relief he sought. The plaintiff in the case of *Barker* v. *The Midland R. C.* 18 Com. B. rep. 46, 25 Law J. Rep. N.S. C. P. 184, experienced a similar fate. In that case, however, he had commenced

an action against the company for refusing to admit him with his carriage and passengers within the precincts of the station. He did not pretend that he wanted to travel by the railway himself, and therefore, altho' if the Company had refused a *passenger* leave to come on the station, he might probably have sustained an action, yet the plaintiff, it was held, could neither maintain such action at Common Law, nor under "The Railway and Canal Traffic Act."

It may therefore safely be laid down, according to the past decisions of the courts, that in reference to the admission of vehicles within the precincts of stations, *public* inconvenience must be proved to arise from the exclusion, in order to induce the court to interfere. Even where excluded cab proprietors made affidavits that inconvenience to the public occasionally arose from the exclusion, the court not being satisfied thereon refused relief. (In Re *Painter*, 2 C.B. N.S. 702).

General Principles laid down by the Court.

As regards the main questions arising under the seventh section, the courts appear to have laid down the following leading principles—

1. That the reasonable interests of the railway itself are entitled to consideration.

2. That due regard must be had to the circumstances which cause the trouble or expense of carrying to the Company for one party, or in one case or set of circumstances, to be greater than in an other, provided *perfect fairness* be shewn by the Company in dealing with such differences. Hence due attention will be paid by the court to reasons for preferential dues arising out of long distances, large quantities, wholesale dealings with the Company, and generally any other things which reduce the trouble and cost of carrying for one party as compared with another.

3. That preferences cannot be justified which are given for considerations wholly irrespective

of circumstances which could make the inconvenience and expenditure for carrying the preferred parties goods, less than for others—so that preferences given to keep out competing lines which the preferred person threatens to promote—or to induce such person to employ the Company on other lines or undertakings which they have in hand, or otherwise to benefit the Company irrespective of the dues for carrying have met with no favour from the Court.

4. That in reference to Railway Companies not running trains in connection with each other, the court will interfere where a case of *public* inconvenience is shewn, but not for a mere case of individual and private grievance. Probably the same remark will apply as to cases of through booking, should such cases come before the court.

Ransome's case.

The fair interests of the Company must be considered.

In the case of *Ransome* v. *The North Eastern R. C.*, Law J. N. S. vol. 26, C. P. 91; 3 Jurist, N. S. part 1, p. 217, and L. T. Rep. vol. 28, p. 239, the court enjoined the Company against giving P———a preference over the Plaintiff as regards the charges for coal carriage, and in delivering judgment Mr. Justice Cresswell stated that in fixing a meaning to the words "undue or unreasonable preference or advantage" *the fair interests of the Railway Company were to be taken into account* in all cases, altho' by so doing the questions before the court arising out of this act might assume a more complicated character; —for instance if 1000 tons could be carried at a lower rate than 10 tons and yield an equal mileage profit—or if goods can be carried 100 miles at a lower rate than 10 miles and yield the Company an equal profit, it may be inferred from the reasoning of the court that the Railway Company might arrange fares generally in favor of large quantities and long distances, as against small quantities and short distances, and the court made an order enjoining the Company to desist from giving an undue preference to Mr.

And the circumstances which operate upon the cost of Carrying.

Prior and to carry coals for Mr. Ransome on equal terms with Messrs. Prior, having due *regard to the circumstances, if any, which render the cost of the Company in carrying for one party* less than the cost of carrying for the other. The court declined to say that an equal mileage rate was to be charged to both, adding "for Messrs. Prior find their own trucks and Mr. Ransome uses the trucks of the Company and *it is possible it may cost the Railway Company more to carry over some parts of their line than others.*"

Oxlade's Case.

The mere wish to introduce a particular Coal into a district, is no ground for preferential dues.

In *Oxlade* v. *The North Eastern R.C.* (Law J. Rep. N. S. vol. 26, C. P. 129; and Law T. vol. 28. 340) the same principle as in Ransome's case was substantially adhered to, and the court enjoined the Railway Company not to charge Mr. Oxlade for the carriage ofcoals at a higher rate than they charge other persons, having a due regard to the circumstances, if any, which render the cost to the Company of carrying for one party less than the cost of carrying for the other.

In that case the Company, from a desire to introduce northern coal into Staffordshire, had made three special agreements with different parties for the carriage of coal at a rate lower than usual, and the court held that such a desire was no legitimate ground for these agreements, and that these were cases of undue preference.

It may be useful however to notice what the Plaintiff applied for and did not obtain from the court.

It having been referred to the Master to enquire into the facts, he reported :—

"First,—That as far as the public were concerned there was accommodation at all the stations for the unloading of coal and coke; that it being impossible to find accommodation for all collieries without materially interfering with the general traffic of the railway, the Company had adopted

the following plan:—They first ascertain, as near as possible, the quantity of coal consumed in the neighbourhood of each station, and build depôts accordingly. They then find what kind of coal is most in request in each neighbourhood, and enter into terms with those Collieries which furnish that coal, to supply the required quantity. They appoint a depôt agent to manage the sale of coals, who, when the stock of coal is getting low, sends an order and waggons for the quantity required; he thus knows when to expect the waggons and makes arrangements for their immediate unloading, so as to avoid any confusion or interference with the general traffic, such as would arise if orders were sent to the Collieries by individuals without going through the depôt agent. The Company deal only with coal owners and their agents, and do not appropriate any coal to private coal merchants; they sell to the public by the depôt agents, and the coal merchants may get what coals they like by sending a proper order through the depôt agent. It makes no difference to the Company what coal is sent, the depôt agent selling for the Collieries, and rendering an account to the owners. The master concluded his report upon that question as follows, "In fact there appears to be one "principle throughout by which the Company are "governed, namely to provide an ample supply "of coals for the public, and to prevent by these "rules any obstruction of the general traffic."

Secondly. The Master reported the circumstances relating to the carriage of coal, from which it appeared that the Company were enabled to carry the coals which come by the Great Northern Railway, at a cost less than the cost of carrying coals and coke for Mr. Oxlade.

It appeared from the affidavits, as to the fifth branch of the rule, that Mr. Oxlade had refused to pay the carriage charged to him at the same rate as to all others under similar circumstances.

Held, as to the first branch of the rule, that the Company were not common carriers of coal.

That as the Company were enabled to carry the coals carried also by the Great Northern Company at a less cost to themselves than the coal, &c., of the plaintiff, Oxlade, the Company did not by carrying that coal, &c., at a lower rate, give the owners of it an undue or unreasonable preference.

That no undue preference was given in providing depôts,

That no undue preference was given in forwarding and delivering coal.

That Mr Oxlade having refused to pay the charges made for carriage upon all others under similar circumstances, at the same rate as upon himself, had no right to ask the Company to find trucks, and that they were not bound to carry his coal to a place for the purpose of being there shifted into other trucks, where they have no convenience for the purpose, and where they do not give such facility to any other person.

That no undue preference was given in the unloading of coal, &c., to coal owners or other persons.

Preferential charges, to enable Landowners to compete with seaborne coal, not justifiable.

In Ransome's Case the court had decided that a desire to enable land-borne to compete with sea-borne coals, was no ground whatever for preferential rates. See *Ransome* v. *Eastern Counties R.C.* 26 Law J. C.P. 91.

Nor preferences, to buy off opposing scheme.

In *Harris and others* v. *The Cockermouth and Workington R.C.* (4 Jurist N. S., P. 1., p. 239; 27 Law J., C.P. 162). The Earl of Lonsdale was induced to abandon his intention of making a railway from coal-pits let to the Messrs. Fletcher upon the Railway Company entering into an agreement that they would carry the coals of his tenants, Messrs. Fletcher, at a sum less than they charge the complainants for carrying coal from the same station. The court held this to be an undue preference, and that it was

not a sufficient ground for a reduced charge as compared with the rate to others, that if such reduction was not made Lord Lonsdale would send his coal by a new railway or some other mode of conveyance. In delivering judgment, Cockburn, C. J., admitted that a Company might consider any circumstances of a general or local character affecting the charge for particular traffic; as for instance that a lower rate might be charged for large quantities than upon a less quantity, and in some cases between terminal and intermediate traffic, and he added "whatever rule the Company lay down it ought to be a rule applicable to all persons similarly circumstanced," and that a Railway Company, altho' entitled to lay down rules in reference to particular *circumstances*, so long as they act bona fide with regard to their own interests and the advantage of the public, cannot make particular bargains with particular *individuals* whereby one person is benefitted and another injured.

Railway Companies, altho' they may, in some cases, consider circumstances, cannot regard individuals.

The court in the last mentioned case intimated that the Company in fixing a rate of charge may take into consideration circumstances of a general or local character, fairly affecting the question, —as for instance, large quantities which are worked at proportionably less cost than small quantities—so also if the Company make a distinction between terminal and intermediate traffic, where there may be fair reasons; for instance, in respect of terminal traffic there may be competition with another railway, and with reference to intermediate traffic it may be, that there being so much more, they can afford to carry the goods over the whole line cheaper, or proportionally so, than they can over an intermediate part of the line. But those are all cases where the *public* is treated with perfect equality. The same court, however, observed in the case of *Baxendale* v. *The Great Western R.C.*, 32 Law T. R. 131, that although the court may feel

Quantities, distances, &c., are grounds of consideration, and may justify inequalities of charge.

some reluctance, partly from an unwillingness to interfere with parties in the management of their own affairs, for their own advantage; partly from a disposition to give Companies credit for acting on an enlightened view of their own interests, as identified with those of the public: yet if the court becomes clearly satisfied that a Company is seeking to promote its own advantage by establishing an inequality which was *unreasonable under the circumstances*, and operated unfairly upon particular individuals, or that it was affording to one person, or to persons, an advantage which it could not afford to another under similar circumstances; this court will not hesitate to interfere to prevent such a result, although by so doing they might prevent the company from securing all the profit that it might otherwise have derived from the use of its property.

But such must be reasonable under the circumstances.

Thus upon complaint that the Railway Company charged for carrying between two intermediate stations a higher rate than was due to the intermediate service, in proportion to the charge made on the entire line of railway, this court, if it were made to appear that the proportion was not justified by the circumstances of the traffic—in other words, was an undue prejudice or unreasonable disadvantage to those using the part of the railway in question—would interfere to set aside such agreement. So again, if an arrangement were made by a Railway Company, whereby persons bringing a larger amount of traffic to the railway should have their goods carried on more favourable terms than those bringing a less quantity, although the court might uphold such an agreement as an ordinary incident of commercial economy, provided the same advantage were extended to all persons under the like circumstances, yet it would assuredly insist on the latter condition. It would endeavour to do so in the case of any special agree-

Charges between intermediate stations should be reasonable as compared with those for the entire line.

Impartiality to individuals.

ment by which the company had secured to a particular individual, the benefit of such agreement to the exclusion of others; or even where an attempt had been made, by keeping the agreement secret, to make it operate undoubtedly to the prejudice of third parties.

As in the case of the Cockermouth and Workington Railway it was held to be no sufficient excuse for preferential charges that otherwise the party would make a new Railway and take his goods by that route; so also in the case of *Baxendale* v. *Great Western R.C.* (Law Times Rep. vol. 32, p. 160) preferential charges (as compared with other carriers) between London and Bristol were not allowed merely because the person engaged to employ *other* lines of the Company for the carriage of all his other goods where such lines were available; the court repeated that a difference in rates to and from *the same places* might be sustained between different persons, one of whom stipulated to carry large quantities every year and those who declined to do so, because the advantages thus secured by the Company related to the carriage of the goods upon the same line and directly affected the rate at which the Company could profitably carry them, similar to that of selling wholesale in large quantities and retail in small quantities; but, in the present case, the advantages stipulated for were wholly distinct from matters which could affect the outlay of the Company in carrying from London to Bristol. The quantity and quality of the goods, and the cost of the Company in carrying them from London to Bristol were the same, whether the articles belonged to Baxendale or the party preferred, and mere *collateral benefits* derived by the Company from the latter were held to afford no just ground for giving him preferential rates. S.C. 28 L.J. C.P. 69.

Preference charges not warranted merely because the person agrees to employ the other lines of the Company.

Altho' the court will consider the fair interests

Districts and charges not to be arranged to diminish the natural advantages of parties.

of Companies in ascertaining when undue preference is given, and give weight to the question of large quantities and long distances, yet perfect fairness and equality must be shewn even in reductions on these accounts—Hence, when a scale of distance charges for carriage from Peterboro' and Ipswich to various towns wasmade, the practical effect of which was to diminish the natural advantages which the dealers at the latter place enjoyed over the former, this was held an undue preference, and an injunction granted against the practice accordingly *(Ransome and Peard* v. *Eastern Counties R. C.*, Law T. Rep. vol. 31, p. 73); and 27 Law J. C.P. 138. In the same case, however, the court declined to interfere where the Company had created districts in which they carried coals at lower ratio for quantities not less than full train loads of 200 tons, and so adjusted those districts that the places where the Ipswich dealers traded were distributed into three districts, in each of which the traffic was, in consequence of such division, insufficient to enable them to send the required quantity and avail themselves of the lower rates. In this case the complainants alleged that in order to take advantage of the reduced rate, they would necessarily (in consequence of the parts to which they traded having been put in three separate districts) have had to send three separate full train loads from Ipswich, whereas the districts were so arranged that dealers from Peterbro' had the places in which they dealt all in one district. The traffic manager distinctly swore that these districts were arranged solely with a regard to consumption, and not with any view of preference, and the complainants case did not fully and clearly shew that the districts could otherwise have been arranged, nor clearly establish a case of undue preference. The court therefore thought the complainants had not sustained that part of their case.

Where a Company made a scale of charges for carrying coal, graduated according to the combined principle not merely of distance but of full loads, and quantity, it is no ground for disturbing this arrangement that another Company complains of not being able to send so large a quantity annually and thus obtain the benefit of the lowest rate, whilst a Company sending this large quantity and in full train loads, obtains the benefit of the arrangement. But if it can be shewn that a scale of rates with reference to distance or otherwise has been *artfully* contrived, with the view (whilst appearing plausible on the face of it) of favouring one Coal Company and prejudicing another, the court will interfere. The statute is not contravened by a Railway Company carrying at a lower rate, in consideration of a guarantee of large quantities and full train loads at regular periods (the same scale being offered to all parties impartially) provided the real object of the Railway Company be to obtain thereby a greater remunerative profit by the diminished cost of carriage, altho' the effect may be to exclude from the lower rate those persons, who from *local position*, or the *extent of their operations, cannot* send the coals so far, or in so large and regular quantities.

Scale of charges may be graduated according to quantities, full and regular train loads, as well as distance merely; but must not be artfully done, for purposes of preference.

In the case in question, the Ruabon Coal Company engaged to send for 10 years along the Great Western Railway, beyond a distance of 100 miles, such a quantity of coal during each year, as would produce to the Company for freight, terminals, wagon hire, and break of gauge a yearly revenue of £40,000, in fully loaded trains, at the rate of seven per week, in consideration whereof a reduced rate of mileage and other privileges were conceded to them, and offered to the complainants. The court considered the agreement made advantageous to the Ruabon Company, but not "*unduly or unreasonably*," so, within the meaning of the statute, inasmuch

as there was adequacy of consideration moving the company, the fact being that regard being had to the guarantee of large quantities, long distance, full trains, and regularity, there is a greater remuneration to the Railway Company per ton per mile for such carriage at the lower rate, than for carrying small quantities and short distances in irregular loads, and the court did not admit that the complainants had any right to insist upon a sale graduated according to distance merely, without regard to quantity, or full train loads.

In fact it must be quite evident to every one that the guarantee of a large traffic enables a Railway Company to work such traffic with greater economy by the arrangement of trains and times, and by special organization of service and constant use of plant adapted to such traffic, and most railway managers will not hesitate to corroborate the evidence of Mr. Saunders in the case in question, that there is a better profit to a Railway Company from a large, regular, and constant traffic carried at a *less* rate than from a small, irregular, and intermittent traffic, carried at a *higher* rate.

In this case of the Ruabon Coal Company it was strongly urged by counsel that the reason for fixing upon a particular distance of 100 miles, was because the Railway Company knew that the principal traffic of the complaining parties was not to London, which is beyond the 100 miles, but to intermediate places beyond that distance, the existence of which fact would have gone to shew that the special agreement made with the Ruabon Coal Company and offered ostensibly to *all* consignees, was only a cloak for concealing undue favor and partiality to the Ruabon Coal Company. But the complainant's evidence did not prove the fact, nor even that any large portion of the traffic lay within 100 miles.

It may happen, that a scale of charges and other terms and conditions are so arranged for

short distances, small quantities, &c., as to be excessive, unfair, or unreasonable, as *compared* with the terms granted for large quantities, long distances, &c., and had this point been raised in this case, the court intimated that it would have felt bound to *submit these matters to a detailed investigation by an Engineer or traffic manager* of a railway, who would be able by calculations to arrive at a satisfactory result upon the principles recognized by Railway Companies of obtaining the greatest quantity of work from an engine, plant, and staff, at the least expense. In other words the court, whilst recognizing the principle that the cost of carriage to the Company being less in some cases than others, and other circumstances may be grounds for graduated and varying charges, has indicated that it is prepared to ascertain that even the varying scales and terms are *relatively* fair and reasonable, so that even those who cannot guarantee the most favourable terms may not be charged more than proportionably higher rates. (*Nicholson* v. *The Gt. Western R.C.* 28 L.J. C.P. 161).

But such scale must be relatively fair.

The case of *Baxendale* v. *The North Devon Railway Co.* L.T. vol. 30, 134, established that Railway Companies violate the spirit of the Traffic Act if they make regulations that packages collected or passed through a particular firm (*Carver & Co.*) shall be charged a lower rate than if sent separately to the station or through some other agents. It was alleged in this case that if large quantities of goods come through one particular person, the cost is less to the Company than if they were taken from several persons; but the Court considered that the practical effect of the regulation was an announcement to the public that they must send no more goods by any carrier but Mr. Carver, and they enjoined the Railway Company to charge the same rate for Manchester packages from Crediton to Barnstaple, as they charge for the like goods under any circumstances.

Preference charge for goods sent thro' a particular Carrier, improper.

Difference of charge where parcels are addressed separately.

The judgment of the Court of Queen's Bench in *Baxendale* v. *The Eastern Counties R.C.* L. T. Rep.vol. 30, 321; L.J. vol. 27 C.P. 137, upheld the practice of a Company charging for parcels less than a cwt. a larger rate than for heavier goods, but where such small parcels are packed together or directed to the same consignee, charging the same rate as for heavy goods. In such a case there was no partiality, and it is evident that more trouble is occasioned where such packages are addressed to different persons, than when they are folded together or addressed to the same consignee.

Company should on request desist from unloading for one, if they will not for another, and thereby prejudice the latter.

In *Cooper* v. *The London and South Western R.C.* (27 Law J. C.P. 324) the Railway Company had been in the habit of unloading all goods and placing them in or near the owners' waggons, and they ceased to do so for C. (whose goods were sent in large quantities and in separate trucks) without extra charge, but continued to do so for P. who sent small quantities, which being put into truck with the goods of others, *it was convenient to the Company* to continue to unload. The court refused to order the Company to unload the complainant's goods also, his application being to the court for this, and not for an injunction to desist from unloading P.'s goods, and it was not proved that he had requested the Company to remove the cause of complaint, but the Judges intimated that had the application been so framed and a proper request made to the Company to *desist from unloading* P.'s goods, they would probably have given relief, especially if the unloading of P.'s goods could be shewn to be prejudicial to C.

A Company cannot give preferences to themselves in their separate trade.

In the case of *Baxendale and another* v. *The Great Western R.C.* 32 L.T. 129, 28 L.J. C.P. 81) the court interfered to prevent a Company giving undue preference even to itself in respect of a trade independent of the railway. The trade in this case was that of collecting and delivering goods. Formerly the Company

charged an uniform rate of 3s. 6d. per ton on all goods conveyed on their railway, between the stations at Reading and Paddington. The goods were collected and delivered principally by complainants at a charge of 4s. 10d per ton. The Railway Company raised the charge for carrying goods, under five cwt., to 8s. 4d., being the aggregate of the former charge of carrying, and that for collecting and delivering, with an intimation to the public that the Company would collect and deliver goods free of all charges. The effect of this was to compel persons desiring to have their goods conveyed by the railway, to employ the Railway Company to collect and deliver such goods, and thus to secure this business and the profit upon it to the railway and exclude complainants therefrom. The court held that the charge of 8s. 4d. for carrying was colourable, and included a charge for collecting and delivering also, and that to charge the same sum to those who employed the Company to carry, collect, and deliver, as to those who employed them to carry only, was undue preference to themselves in their capacity of collecting and delivering. The court in this case held that the trade of collecting and delivering to and from the terminus, was a distinct trade carried on by the Company to that of a Railway Company, and that the object of the regulation was to force all persons to employ them in their trade. The court in this case and in another case between the same parties, distinctly held that whatever separate interests a Railway Company has—whether as proprietors of *another* line of railway, or another business, they must as regards such separate interests be looked upon entirely as third parties, and they cannot be allowed to give preferential terms to persons on their railway, merely because such persons employ them or afford certain advantages as regards their separate railway—or in respect to any other business in which the

Railway Company may be interested, apart from their position as carriers on the line of railway. See, also, *Garton's* case, 28 Law J. C.P. 69, and App.

A case of *public inconvenience* necessary to induce the Court to order continuous and thro' trains.

One of the objects of section 2, was undoubtedly to provide against all public inconvenience from Railway Companies declining to run trains in connection with other, and refusing through booking and other facilities when they could readily afford such advantages. An application was made in *Barrett* v. *The Great Northern and Midland R. C.* 26, L.J. C.P. 83, 1 C.B. N.S. 423, to compel two Companies to run trains in connection and at certain times. In regard to such cases, however, the court acted upon the very proper and reasonable principle, that the case must be shewn to be one of *public* inconvenience, and not one of mere *private* grievance to an individual. The applicant did not make out any case of *public* inconvenience whatever, and the evidence on behalf of the Companies shewed that there was abundant accommodation to the public, and that no complaints had ever been made of inconvenience suffered from their arrangements. The court, however, gave a very clear intimation (which it would be well for Railway Companies to notice) that whenever a case of *public* inconvenience was established it *would* interfere. Cockburn, C.J. said: "Where there are two competing lines, say from A to B, and one of them has a continuation from B to C, the Company having such continuation might so arrange the departures from B, as seriously to interfere with the other, and perhaps shorter line, and operate to the prejudice and inconvenience of the public, and force the traffic to B over a greater extent of line, at the sacrifice of cost or time, or both. In such cases the court *would* interfere." Such cases as that put by C. J. Cockburn and others, similar to it, are frequent, and it is plain that the court would put a stop to them, if application was made and pro-

perly supported by evidence of undue prejudice to another Company, or public inconvenience or both. Williams, J. said: "If the court had been "satisfied that the *public* convenience did require "the *continuous train which is requested*, I for "one certainly should pause before I discharge "the rule."

Equality to branches.

In the case of *The Caterham R.C.* v. *The London and Western R.C.* 26 L.J. C.P. 161, 1 C.B. N.S. 410, where the former Company applied for the same facilities as the other Companies afforded to *other branch lines* connected with those railways. The court decided that in all such cases, the words of the Act of Parliament, as to undue preference and undue prejudice, must refer to persons and Companies using the line between the same termini, and that it was no ground for the interference of the court that passengers travelling on the Caterham Branch, were charged by the Brighton and South Eastern Companies higher rates, than passengers were who travelled on their *branch* lines to Epsom, and other places, so long as all persons using the Caterham branch, were charged the same rates, and so long as those Companies did not charge for going on their line to the Caterham Junction, a higher rate than they charged for similar distances on their lines; but in the same case the court decided that as the Brighton Company had provided covered platforms at *other* junctions, and none at the Caterham Junction, this was subjecting the public, using the latter junction, to inconvenience, and they granted a rule to compel a covered junction at Caterham.

CHAPTER VI.

REMARKS ON THE FURTHER APPLICATION OF THE TRAFFIC ACT.

Past decisions of the Court of Common Pleas, on the second section of the statute relative to reasonable facilities and undue preference, afford us some guidance as to the future application of the statute by the Courts. It must be admitted that the Judges of the Court to whom the legislature has thought fit to intrust the working of this Act of Parliament have shewn considerable anxiety to carry out its provisions with a due regard to the interests of companies, and the just claims of the public. In general the decisions have been characterized by great fairness, and some of the leading questions have already been decided.

Notwithstanding, however, that the Act has been in force for about five years, its operation, as between railway companies themselves, has been but imperfectly tested, and a class of evils remain yet to be remedied under its provisions. Railway and canal companies are not only enjoined to afford reasonable facilities to the public but for each other. No such company is to give any undue or unreasonable preference in favour of any company, or subject any company to undue or unreasonable prejudice or disadvantage in any respect whatever; and every railway company and canal company, and railway and canal company having or working railways or

canals which form part of a continuous line of railway or canal communication, or which have the terminus or wharf of the one near the terminus or wharf of the other, are to afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that *no obstruction* may be offered to the public desirous of using such railways or canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public. Under a judicious application of this Act by the Court, much of the unseemly partiality and obstruction displayed by some companies to subject the traffic of other companies to inconvenience—to divert traffic from its legitimate routes—and by secret and other arrangements to favour one company and place others to disadvantage, may be reasonably expected, to some considerable extent, to be capable of remedy.

Equality to uniting lines.

Suppose the case of a railway company having a line from A. to B. with several railways joining it at intermediate points; the railway from A. to B. is, we presume, under obligation by this statute to afford to all the uniting railways the same facilities, or as nearly as practicable, *on the line from A. to B.*, that is, it must give each of them, as far as circumstances reasonably allow, similar conveniences of junction arrangement—the passengers of each, similar general comforts and accommodation as to covered stations and other conveniences—and each company the same mileage and other rates over the line from A. to B., having due regard to distances, quantities, and other circumstances as usual. Even where there are circumstances either as to distance, quanti-

ties, or otherwise, apparently rendering a *distinction* of rate reasonable, the Court will, if the differential charge is alleged and prima facie shewn to be undue or unfair, or if the time of arrival or departure of trains is shewn to be contrived so as to prejudice or annoy, refer it to some competent practical person, to report on what is reasonable and fair, having regard to the proper claims of each party. But if in consideration of certain advantages, any one of the companies guarantees a large and defined amount of traffic, or regularity of train loads, and the others do not, differential terms to an ascertained and reasonable extent would in all probability be allowed. In fact, such has been the spirit of past decisions and judicial dicta.

Undue partiality amongst Companies.

Railway companies are therefore bound to carry the traffic of each other, and to pass it along their lines on the same terms as to impartial rates and advantages as they are bound to carry for merchants and others; and they can no more *unduly* prefer one company to another, than they can unduly prefer one merchant to another. The decisions bearing between merchants and railway companies, are, it would appear, equally applicable to cases where railway companies have to employ each other for the transit of traffic. A railway company cannot subject another railway company with which it chooses to be on unfriendly terms, to undue disadvantage or prejudice, any more than it can do so to common carriers or tradesmen using the railway, and the spirit of the decisions before noted will, it is believed, pretty plainly shew that when cases of the kind come before the Court, a strict and evenhanded equity will be applied to them.

It not unfrequently happens that B., a railway company, allows a friendly line (C.) certain favourable rates and other advantages, in consideration of benefits which the latter concedes to the former in *other* ways, and that B. refuses a third

company similar rates and facilities. If we refer to the spirit of the decisions in the cases of *Harris* v. *The Cockermouth and Workington R.C.*, *Baxendale* v. *Great Western*, and *Oxlade's* case, it will be found very doubtful whether any *collateral* advantages given by C. to B. would justify the latter in giving the former more favourable rates and terms than those granted to other companies. The Court has plainly intimated that the considerations authorizing differential rates, must be something directly affecting the cost or convenience of the company carrying that particular traffic on their line:—such as large quantities—long distances—full train loads—and any other similar circumstances; and it has been decided that the object of keeping out competing lines—or of introducing a particular traffic into a particular district—or of binding a party as a customer on *other* lines belonging the company—or of enabling landborne to compete with seaborne traffic, or other things purely collateral, although indirectly benefitting the company yet not affecting the cost or convenience of carrying traffic for different persons, on the same part of their line, cannot form legitimate ground for imposing varying terms on those persons. If a railway company, having a line from A. to B., gives to another railway company (C.) easier rates than it does to a third line (D.) merely on account of some *collateral* benefits obtained on C.'s line, those benefits not making the cost and convenience of carrying C.'s traffic on the line from A. to B. more favourable to the company working the last-mentioned line, it seems to afford no ground for the preference, and the company would be enjoined to carry for D. on the same terms, due regard being had to any circumstances which make the cost or convenience of carrying for D. less favourable to the company than in respect of C,'s traffic.

Grounds to justify distinctions.

Some intimations of C.J. Cockburn, in deciding *Baxendale's* (collecting and delivery) case, (see ante, and also L.T. Rep. vol. 32, p. 131) may be noticed here. He says, the legislature has, in consideration of the powers and monopoly conferred on railway companies, imposed on the latter the obligation of affording accommodation on equal terms to the whole of the public, and that in reference to matters justifying a difference of treatment, the distinction is not always kept in sight, whether the interests of the company sought to be promoted by a particular regulation complained of, is an interest arising with reference to the *railway itself*, or an interest having reference to matters distinct from the railway; as, for example, where the same railway company are proprietors of another line, or carrying on some separate business. In all such cases the company must be taken to be *quoad* the particular railway or business in the position of third parties, and they cannot, with a view to promote the interests of their other railway, or of their separate business, give an undue preference. Thus, if the railway company, being proprietors of one line from A. to B., and another line from C. to D., were, in order to obtain the custom of a particular individual on the first of these lines on which they might be subject to competition from a rival line, to agree to carry his goods on the line from C. to D. at a cheaper rate than those of another person using only the latter line—or if a railway company carrying on, in addition to its business as carrier on the line, that of carriers to and from the termini of the railway, were, with a view to obtain additional custom on the latter, to carry on the railway for those who so employed them as carriers to and from the terminus, at a lower rate than from those who did not; in both these cases (he adds) we should have no difficulty in holding that the company must be considered, as regards their

separate interests, in the light of third parties, and that they cannot promote those separate interests at the expense of the right of the public to that equality in the particular matter it was the intention of the Act of Parliament to secure.

In all cases, therefore, where railway companies have either as a corporation or in the names of trustees, any interest whatever in in any other railway by holding shares in it or otherwise, or in any collieries, mines, quarries, or other trade or project, they cannot favor traffic from or to these undertakings, any more than they can the traffic of a stranger.

In cases where Railway Companies divert traffic from its shortest and legitimate route, it generally happens that such diversion keeps the traffic a greater distance on the line of the Company diverting, or on the lines of one or more of the Companies in the confederacy for diverting it, and in most cases this cannot be done without a corresponding reduction of dues on the part of the Company, nor without loss of time in the extra distance of transit. In the case where the Railway Company has to reduce its dues in order to meet the extra distance, it necessarily lays itself open to an application to the Court on the part of all other persons using the line to make a similar proportionate deduction in their rates of traffic, and in case of loss of time, or other inconvenience arising from forcing traffic by a circuitous route, that is clearly a case within the remedies of the Act, and would be met at once by the Court. In a case where one Company keeps the traffic on its line by offering obstruction, or refusing proper arrangements to another line having shorter route for the traffic, C. J. Cockburn expressly stated in deciding Barrett's case (see ante page 36) that the Court would interfere; and altho a Railway Company having a line from A. thro'

Shortest routes.

C. to D. may carry the traffic from A. to D. at a lower rate per mile than from A. to C. only, merely on account of competition and to prevent a rival and shorter line from C. to D. getting it, and the Court might make some allowance in consequence of the desire to meet such competition, yet treating the shorter railway from C. to D. simply as a rival carrier, the Court would not allow it to be unduly prejudiced, and according to the tenor of the decisions in the cases of *Garton* v. *Great Western R.C.* (Appendix 65); and *Baxendale* v. *same Company* (Appendix 51) would not permit the charges from A. to C. to be the same as from A. to D., merely in order to prejudice the rival line when the goods deilvered at C. are to pass over it, nor sanction any other arrangement by which the last mentioned line would be subject to undue and unfair disadvantage.

In all cases much depends upon the way in which these matters are brought before the Court and supported by evidence of private disadvantage, public inconvenience, and of improperly partial conduct on the part of the Company complained against. Not a few of the cases where the Court failed to apply a remedy were unsuccessful for want of necessary proofs, and some of them failed for want of evidence which there is every reason to believe could have been given if it had been sought for, and proper pains taken in supporting the case.

The Act is calculated to have a very beneficial effect, and there is little doubt that future decisions will carry out still further its spirit and intention so as to embrace at last most of the cases now requiring remedy.

Before concluding this chapter as to the future application of the Act, it may be observed that no legal decision has yet held that *signed* special contracts are required by the Traffic Act, 1854, except where it is sought to extend protection

Signed Contracts.

to the negligence or default of the carrier, and it may be inferred, as stated in chap. 3, that in other cases the law applicable previous to the Act will still prevail. The clause as to special contracts is a proviso upon a section referring altogether to losses and injuries "*occasioned by neglect or default*" of the Company or its servants; and the signed special contracts mentioned in the proviso may fairly and properly therefore be inferred to be such contracts only as are to be protective against such neglect or default. But the safest plan for Companies, is to have all contracts signed, and not to rely upon the uncertain result of a judicial decision upon this very obscurely worded and clumsy section.

CHAPTER VII.

CANAL AND INLAND WATER CARRIERS.

At Common Law, carriers by water are subject to the same duties and invested with the same rights as common carriers by land; but in reference to carriers by *sea* many statutes have given them special immunities. Carriers by sea do not come within the scope of this treatise, and it is unnecessary therefore to consider the somewhat complicated state of the law respecting them.

General principle.

The general principle in reference to carriers at Common Law is that there is no distinction as to either rights or liabilities between a carrier by land or an inland carrier by water, or as Sir William Jones expresses it between a *Wagon* and a *Barge*. *Rich* v. *Kneeland*, Cro. Jac. 330; c. f. 12 Mod. 410. 22 Ass. 41. *Williams* v. *Lloyd*, Sir Wm. Jones 180; C.B. Forward v. Pittard, 1 T.R. 27. *Proprietors of the Trent Navigation Company* v. *Wood*, 3 Esp. 132; *Dale* v. *Hull*, 1 Wils. 281; *Richardson* v. *Sewell*, 2 Sm. 206; *Sutton* v. *Mitchell*, 1 T.R. 18; It does not appear to be settled that a hoyman or waterman plying *occasionally* only for hire when he can get a job, and not regularly from one place to another, is a common carrier; in fact it would appear that carmen or cabmen *not going regularly*, but only *occasionally* from one place to another are not to be treated as common carriers. *Brind* v. *Dale*, 8 C. and P. 207. The liabilities

of such person exercising *occasional* duties of this description will be the same as special carriers or bailees for hire, and they will only be answerable for negligence. The distinction between occasional and regular carriers, is not very consistent with principle.

The duties and liabilities of carriers by water are the same therefore as those on the land except so far as affected by statute, and cases affecting water carriers are decided upon similar principles to those affecting land carriers. An inland water carrier impliedly contracts that his vessel is waterproof and safely voyageable. 5 East. 428, *Lyons* v. *Mellor*.

The Carriers' Act, 11 Geo. 4 and 1 Wm. 4, does *not*, however, apply to inland carriers by water, who have not adopted, or to whom the provisions of the 8 and 9 Vic. c. 42, do not apply, so that the latter are not protected for the non-disclosure of value of the special goods in the Carriers' Act named. If the view adopted by the writer in Chap. III be correct; namely —that *signed* special contracts were only meant to be required under that Act when protection is sought to be extended to the neglect or default of the carrier or his servants, it follows that the Carriers' Act not applying, a public notice of an inland water carrier limiting his liability will have the same effect as it would have had in the case of a land carrier prior to the passing of the Carriers' Act (23rd July, 1830), *except* in cases of *negligence or misfeazance.*

Application of Carriers' Act.

The 8 and 9 Vic., c. 42 (see Appendix) enables the Company of proprietors of any Canal, River, or Navigation; or their Committees, Directors, Managers, or Agents, to carry as common carriers on their waters or any waters communicating therewith, and it makes them liable to be sued and treated as common carriers. The sixth section of that Act expressly provides

Canal Carriers' Act.

that they shall not be liable further, or in any case, than common carriers would be liable; and that they shall be entitled to the benefit of every protection and privilege which then or thereafter common carriers were entitled to, so that under this section it is presumed, in cases where the Act applies, all the protection of the Carriers' Act (1 Wm. 4) would be applicable. Where the property of a Canal or Navigation is vested in shareholders, the Act (8 and 9 Vic.) does not apply until adopted by a meeting of shareholders.

Where however an inland water carrier on a Canal or any Navigation where tolls are levied by Act of Parliament, seeks protection as against his *negligence or default* he can only obtain it by a special contract duly signed, the conditions whereof must be just and reasonable to the satisfaction of the presiding Judge before whom the case is tried, agreeably to the tenor of the Railway and Canal Traffic Act, 1854, and the cases thereon, before mentioned.

As to inland water carriers on Rivers or Navigation whereon no tolls are levied by authority of Parliament, or with respect to whom the 8th and 9th Vic. cap. 42, is found inapplicable, they appear to be unaffected by either the Carriers' Act or the Railway and Canal Traffic Act, 1854, and they can therefore protect themselves, even against their negligence in the same way as land carriers could before July, 1830, by express written or oral contracts, or by bringing home to a customer express or implied knowledge of a public notice limiting their liability.

In reference to undue preference — Canal Companies and the Undertakers, Commissioners, or Trustees, of any Navigation or navigable River established, incorporated, or regulated by Act of Parliament, may, by Act 8 and 9 Vic., cap. 28, alter or vary their tolls, rates, and duties, not exceeding the maximum amounts

allowed by their respective Acts of Parliament; but all such tolls are to be *charged equally and at the same rates to all persons under the like circumstances.* In cases where such Canal or Navigation belongs to *shareholders,* the Act is only to be applied with the consent of a majority of two-thirds of the shareholders present personally, or by proxy, at a meeting. The Act will be found in the Appendix.

The Statute 8 and 9 Vic., cap. 42, is however of a more general nature, and applies to the Company of Proprietors, Trustees, or Undertakers of any Canal, River, or Navigation, or their respective Committees, Directors or Managers, Superintendents or Agents, and it authorizes them to act as common carriers for profit on their canals, rivers, or navigation, or railways belonging thereto, and constructed under their Acts of Parliament, or on any river or navigation communicating therewith; and to employ boats and other working stock for the purpose, and to make reasonable charges for the same, in addition to the tolls or dues authorized for their canal, navigation, or railway; but (by section 4) all charges for the carriage of any such goods, &c., or for the use of their boats or vessels, or for the supply of haulage, trackage, or other power, are to be "*at all times charged equally and after the same rate,*" whether per mile, or per ton per mile, or otherwise, in respect of all goods, &c., of a like description conveyed or propelled in a like boat or vessel at the same rate of speed, and passing along the same portion of the navigation under the like circumstances, and "*no reduction* "*or advance in any such charges shall be made* "*either directly or indirectly in favour of, or* "*against, any particular Company or person*" passing along, or using, or sending goods, &c., along the same portion of the navigation under the like circumstances.

Such language is strong, but it is nothing more than an assertion of the ancient principles of the law.

The second section of the Railway and Canal Traffic Act, 1854, has already been quoted (ante chap. V.), and this, and other parts of the Act, are applicable to all canals and other navigation whereon *tolls are levied by authority of Parliament*, and to the wharves & landing places of such canals and navigation used for the purposes of public traffic. The expression canal company in that Act includes not only a company, but every person, owner or lessee, of, or contracting to work any canal or navigation constructed or carried on under the powers of any Act of Parliament.

CHAPTER VIII.

CHARGES—LIEN—AND CLAUSES THEREON IN SPECIAL CONTRACTS.

A carrier is entitled to his reasonable charges, but cannot extort what he will (*Harris* v. *Packwood*, 3 Taunt. 372), and if he refuse to carry upon reasonable terms the customer may tender what he believes to be reasonable, and if such tender be found to be fair, the carrier will be liable for refusing to carry, but he is not bound to carry until a reasonable sum is tendered, and then only if he has room and if the articles are such as he professes to carry. (*Pichford* v. *Grand Junction R. C.*, 10 M. and W. 399; *Johnson* v. *Midland R. C.*, 4 Exch. 367; see also chap. 2). Instead of tendering, and incurring the inconvenience of the delay in the transmission of the goods, the customer may pay, under protest, the unreasonable sum demanded by the carrier, and afterwards recover the excess by an action at law (*Parker* v. *Great Western R. C.*, 7 M. and G. 253).

Reasonable charges.

Tender.

Action for excess of charge.

The carrier may recover his reasonable charges in an action. The charges of Railway Companies are usually limited by their Acts, with the general power to vary the same, but all such variations must be reasonable, fair, and equal to all parties alike, without bias against, or preference for, particular individuals, classes, or companies.

Packed and other parcels.

The charge can be varied according to the trouble, expense, and responsibility attending the receipt, carriage, and delivery of the articles; and for small packages it may be reasonable that more ought to be paid than a proportionate price according to weight, of the price of larger parcels of the same commodity, by reason of the trouble in receiving, despatching, and delivering being equal, and the risk of abstraction and loss greater; but if the small packages are united in one large package and delivered to the carrier in that large package addressed to one consignee, the carrier cannot charge for each separate parcel contained in it, nor can he fix the same charge for carriage whether he delivers goods at the residence of the consignee or merely at his own terminus; nor can a Railway Company fix one charge for the same class of goods for carriers and another for the public, unless the former, as is often the case, perform some duties for themselves which the ordinary public do not, in which case a fair and reasonable difference is allouable. To grant privileges in point of charge as to packed parcels, or otherwise, to the community at large, which are withheld from carriers as a class, is also illegal, as in fact are all attempts to institute different tariffs for different classes unless the trouble or risk be less for one class than another. (*Pichford* v. *Grand Junction R. C.* 10 M. and W. 399; *Parker* v. *Great Western R. C.* 7 M. and G. 253; *Edwards* v. *Great Western R. C.* 11 C. B. 588, 21 Law J. C. P. 72; *Crouch* v. *Great Northern R. C.* 23 Law J. 148 Exch.)

Lien.

A carrier has at common law the right to detain goods which have been entrusted to him to carry until his reasonable charges for carrying the same goods be paid by the owner or employer (*Skinner* v. *Upshaw*, 2 Ld. Raymond, 752), even altho' they have been delivered to him by a wrongful owner and are claimed by a rightful

owner (Holt C.J. in *York* v. *Greenhaugh*, 2 Ld. Raymond, 867). This common law right does not however (except in cases of a distinct usage or contract to the contrary) extend beyond the carriage of the particular goods detained; but an extended lien even for the general balance owing to the carrier by the customer may be based upon a clearly proved usage, or upon a contract between the parties, and which contract was in *Rushforth* v. *Hadfield*, 6 East. 519, implied from the general course of dealing between the parties; but the instances to prove usage should be ancient, numerous, and important, *Leuckhart* v. *Cooper*, 3 Bing. N.C. 107; *Holderness* v. *Collinson*, 7, B. & C. 212. If by agreement between the parties, arrangement has been made that the charges for carriage are to be paid at a future day after the delivery of the goods, or terms have been created inconsistent with a lien, no lien will attach in the meantime (*Crawshaw* v. *Homfray*, 4, B. & Al. 50). If goods in separate packages are delivered to a carrier, by one contract or under circumstances which make the transaction one contract, it appears that the carrier has a lien on all and each of the packages for the carriage of all or any of them; but it will be otherwise if there is a separate contract in respect of each, for in such a case the lien on each package will only be for the sum due for its separate carriage. (*Stephenson* v. *Blakelock*, 1 M. and S. 535; *Chase* v. *Westmore*, 5, M. and S. 180).

For general balance, &c.

A lien on a passenger's luggage may be maintained for its carriage, and it is presumed for the carriage of the passenger also; but a lien cannot exist on the passenger himself (*Wiggins* v. *Brotherton*, C. and P. 2), but the refusal of a passenger to pay his fare may under a Company's bye-laws subject him to a penalty and summary conviction (*R.* v. *Frese*, 24 L.J. M.C. 63),

Lien on Passenger's Luggage

Lien lost if possession parted with.

A carrier's lien is destroyed irresumably if he parts with the possession of the goods or waives his lien, and usage for carriers to retain goods as a lien for a general balance of accounts between them and their *Consignees*, cannot affect the right of the *Consignor* to stop goods in transitu (*Oppenheim* v. *Russel*, 3 Bos. and P. 42; *Leuckhart* v. *Cooper*, 3 Bing. N.C. 107).

Special clauses.

In preparing special agreements, or conditions for carriage, it will be quite proper to insert clauses defining the extent of lien claimed by the carrier and such a clause will be found in the form of contract set out in the appendix.

CHAPTER IX.

PROTECTIVE CLAUSES AS TO ADVERSE TITLE, STOPPAGE IN TRANSITU, ETC.

Carriers are sometimes placed in great difficulty by claims, either absolute or by way of lien, upon the goods they carry. The goods may be claimed by another person than either the consignor or consignee—they may be followed by a landlord for rent, or by a sheriff's officer under a writ of execution, or stopped in transitu by the consignor upon the ground of the insolvency of the consignee.

Disputed title.

Some cases have held that the law which compels an agent to account to his principal, and forbids him setting up the rights of third parties, is strictly applicable to carriers, and that the latter cannot set up the title of a third person against the consignor or consignee. (*Laclough* v. *Towle*, 3 Esp. 115, contra *Ogle* v. *Atkinson*, 5 Taunt. 763).

On the other hand, it has been held that a bailee such as a carrier, can have no better title than his bailor (the consignor) had, and that if the carrier, *having notice* of the claim of a third person, delivers the goods otherwise, or to the order of the bailor, he does so at his own risk. (*Wilson* v. *Anderton*, 1 B. and Ad. 450). If a carrier having received goods from some one not entitled to them, delivers them according to his directions, before he knows of the lawful owner,

he of course is not liable to any claim on the part of the latter.

Carrier may deliver to real owner.

In the last case upon the subject (*Sheridan* v. *The New Quay Company*, 28 L.J. C.P. 58), it has been held that a common carrier is not estopped from disputing the title of the person from whom he has received goods to carry—and that it is an answer to an action of trover against the carrier by such person that the goods have been delivered to the *real* owner on his claiming them. Mr. Justice Willes, in delivering judgment, said, "The defendants were common carriers; and therefore bound to receive the goods for carriage. They could make no enquiry as to the ownership. They have not voluntarily raised the question; it was raised by the demand of the real owner, before the defendant had parted with the goods. The law would have protected them against the real owner, if they had delivered the goods in pursuance of their employment without notice of his claim. It ought equally to protect them against the *pseudo* owner, from whom they could not refuse to receive the goods, in the present event of the real owner claiming the goods, and their being given up to him. The compulsory character of the employment of a carrier, furnishes ample grounds for so holding; and we find authority for doing so in *Story on Bailments*, sec. 266, 582. There is also a somewhat analagous case, with respect to a pledge—*Cheesman* v. *Exall*, 6 Exc. R. 341, S.C.; 20 L.J, Exc. 209."

Interpleader.

Still the carrier has upon him the burthen and risk of ascertaining who is the *real* owner, which in the complication of mercantile negotiations, may not always be an easy task. The interpleader Act of 1 & 2 W. 4, c. 58, it is true, enables the carrier, whilst he has the disputed property in possession (*Scott* v. *Lowes*, 2 C.M. and R. 209), after an action is brought against him,

by an application made after declaration and before plea pleaded, in any action of assumpsit, debt, detinue or trover, shewing that he does not claim any interest in the goods, but that the right thereto is claimed by some third party, to obtain an order to compel such third person to appear and defend the action, or relinquish his claim; but the proceedings under this statute are attended with considerable risk and expense to him, and there appears to be no reason why a carrier should not protect himself as to such adverse claims by a clause similar to that inserted in the form in the Appendix, and it is apprehended that such a clause would be deemed quite reasonable by the Court.

Necessity of protective clauses.

In general, every unpaid vendor of goods has a right, on the insolvency of the purchaser, to stop the goods if still on their way or passage to the latter, and it may be laid down as a rule that the transitus is not at an end, and therefore that the right of stoppage exists, until the goods have reached the place named by the buyer to the seller, as the place of their ultimate destination, or the place where they are to be left or deposited, to be at the orders and disposal of the buyer. If a man be in the habit of using the warehouse of a wharfinger as his own, and making it his repository for goods, and disposing of them there, of course the journey will come to an end as soon as they reach that warehouse. The right of transitu continues so long as they are in the hands of the carrier *as such*. If he holds them as a warehouseman, for the purpose of custody, to the order of the consignee or his agent, that is not a possession by him as a carrier, but in a new capacity—*Lickbarrow* v. *Mason*, 2 T.R. 53, 1 Smith's Leading Cases, 387, *Whitehead* v. *Anderson*, 9 M. & W. 532. The carrier will be entitled to express notice from the consignor before he will be held liable—*Whitehead* v. *Anderson*, 9 M. & W. 518.

Stoppage in transit.

In order to protect the carrier against the litigation and loss arising out of cases of attempted stoppages in transitu, it is desirable to define clearly in his special contracts when his possession as *carrier* ceases, and the actual or constructive possession of the consignee begins.

The cases on the Traffic Act, which form the subject of observations in chapters IV, V, and VI, will be found reported in the Appendix.

APPENDIX.

APPENDIX.

Lake

April 30, 1856.—WISE v. THE GREAT WESTERN RAILWAY COMPANY.

(25 Law Journal Reports, (N.S.) Exc. 258.)

Negligence.—Effect of a signed Contract, under the 17th and 18th Vict., c. 31, s. 7.

At the trial before the Lord Chief Baron, at the sittings in London, after the Michaelmas Term, it appeared that the plaintiff was a livery stable-keeper at Eton. He lent a horse to Mr. Johnson, at Newbury, who returned it by the Great Western Railway, on the 31st March, to be taken to Windsor, the nearest station to Eton. Mr. Johnson signed the following document:—

"Great Western Railway.—9·45 o'clock train, March 31st, 1855.—Newbury to Windsor.—Mr. Wise, of Eton.—Paid for horse, 12s. 6d.—Notice. The Directors will not be answerable for any damage done to any horses conveyed by this railway.

"I agree to abide by the above notice. W. T. Johnson."

The horse was conveyed by the Great Western Railway to Slough, and then by the branch line to Windsor, where it arrived the same afternoon. The plaintiff had no notice from Mr. Johnson until the following day that his horse had been forwarded, and he then went to the station at Windsor to inquire for it, and although at first the porters said no horse had arrived there, on search being made, the horse was discovered in a box which had been shunted on a siding. The porters had in fact forgotten or overlooked it, and the animal was very much injured by being kept in one position all night and exposed to the cold. The evidence was contradictory as to whether the horse was addressed to the plaintiff at Eton. It was contended, on the part of the plaintiff, that the injury was occasioned by the negligence of the Company, and that although it was usual for the owner to send to meet his horses, his not doing so did not excuse the negligence of the railway servants; and a witness was called who proved that the Company was in the habit of sending horses to a stable near the station when there was no one to meet them. As to the notice, it was urged that it only covered risk on the journey, which had terminated before the injury was sustained. The learned Judge directed a verdict for the defendants, with leave to the plaintiff to move to enter a verdict for him for £50.

A rule having been obtained accordingly.

Mr. Unthank shewed cause and cited the 17 and 18 Vict., c. 31, s 7; the 11 Geo. IV., and 1 Wm. IV., c 68; Carr v. the Lan-

cashire and Yorkshire Railway Company; and Austin *v.* the Manchester and Sheffield Railway Company.

Serjts. THOMAS and LUSH supported the rule.

Chief-Baron POLLOCK delivered the judgment of the Court:—There can be no doubt whatever that the person who had hired the horse was himself the real cause of all the mischief. The Railway Company, to a certain extent, may have been blameable, but the real person who produced the mischief was the sender of the horse; who sent him without any letter intimating that he was coming, and without any groom or person to attend him during the journey; and one of the witnesses stated it was the usual and proper course for an intimation to be given, and for somebody to come and meet the horse at the end of the journey. If that had been done, the horse would have been taken care of; therefore, it appears to us to be an attempt to throw upon the Railway Company (who certainly are not free from blame in one sense) that which really was occasioned by the person who sent the horse. But we think that the mischief was within the notice, and that the horse being accepted under a special contract, the Railway Company was not liable for any damage that might be done to him while remaining at the station till somebody came for him or made an application for him; this must be considered as part of the risk of sending him from one place to another. We think, therefore, that the verdict ought not to be disturbed, and the rule, therefore, will be discharged.

Rule discharged.

1856.—SIMONS v. THE GREAT WESTERN RAILWAY COMPANY.

(26 LAW JOURNAL, C.P. 25.)

Reasonable Conditions and Special Contract.—Railway and Canal Traffic Act, 1854.

Action against the defendants for carelessly and negligently conveying goods whereby part lost and part damaged.

The third plea alleged that defendants received the goods subject to a *special contract*, that defendants should not be answerable for loss or damage of goods insufficiently or improperly packed, and that same were so packed.

Fourth plea.—That the goods were received to be conveyed at a special or mileage rate, and under the contract that defendants should not be answerable for loss or damage, howsoever caused, to the goods whilst so conveyed, and that the loss or damage was caused whilst the goods were so conveyed.

The second replication set forth the actual agreement and alleged negligence, and that the contracts set forth in the third and fourth pleas were void. To this the defendants rejoined that the conditions in the contracts were just and reasonable, and also

demurred. The plaintiff joined issue on the rejoinder, and demurred thereto also.

The special agreement contained, amongst other conditions, the following, namely :—

"4. That they (the Company) will not be accountable for the loss of or for damage to any goods arising from fire, civil commotion, tempest, or act of God; nor for loss, detention, or damage of wrappers, boxes, or returned empties of any description; nor for any goods put into returned wrappers, boxes, or empties; nor for any goods left until called for, or to order, or left or warehoused for the convenience of the parties to whom they are consigned; nor for the *loss, detention*, or damage of any package *insufficiently or improperly packed*, marked, directed, or described, or containing a variety of articles liable by breaking, to damage each other, nor for leakage arising from bad casks or cooperage, nor for damage to cast iron furniture, or other goods of a slight construction; and they give notice that *no claim* for damage *will be allowed unless* made within three days after the delivery of the goods; nor for *loss unless made within three days* of the time that they should be delivered."—And "15. Goods conveyed at *special* or *mileage rates* must be loaded and unloaded by the owners, or their agents; and the Company will not be responsible for any risk of stowage, loss, or damage, however caused; nor for discrepancy in the delivery, as to either quantity, number, or weight; nor for the condition of articles so carried; nor for detention or delay in the conveying or delivery of them, however caused."

Mr. HONEYMAN, for the plaintiff, cited the "Railway and Canal Traffic Act, 1854," and contended that notwithstanding that in this case the special contract was signed the conditions of the contract must still be just and reasonable. He submitted that it was not the law that a special contract might contain any conditions whether reasonable or unreasonable. He then contended that the conditions were unreasonable in providing that the Company were not to be liable for loss or detention of goods improperly packed, and in providing that the Company were not to be liable for loss or damage of goods carried on special or mileage rates.

[Mr. Justice CRESSWELL: These goods are carried on special mileage rates. The Company say they are willing to make a bargain, but they will make it on certain terms.]

Mr. PEARCE, for defendants, contended that the provisions of the "Railway and Canal Traffic Act, 1854," as to just and reasonable terms, only applied to the conditions of notices, and that if a special agreement was made it was binding on both parties, whether its provisions were reasonable or not. He also submitted that the terms were reasonable.

[Chief-Justice JERVIS: What can you say to the condition, that the Company shall not be liable for detention of goods if they are badly packed?]

Mr. PEARCE: There are many cases in which the method of conveyance would be changed on account of the packing, and in many cases the goods would be liable to be lost by bad packing.

[Chief-Justice JERVIS: What do you say to the three days' notice, in the last part of the fourth article?]

Mr. PEARCE: No question arises on that.

Chief-Justice JERVIS: As the next case—The London and North Western Railway Company, appellants; Dunham, respondent—turns upon nearly the same point, we shall hear that case argued before giving judgment.

LONDON AND NORTH WESTERN RAILWAY COMPANY v. DUNHAM.

(26 LAW JOURNAL, C.P., 31.)

The plaintiff brought this action to recover of the Company £50. the loss sustained by reason of the non-reception within a reasonable time of meat delivered in Liverpool, on Dec. 19th, 1855, to be forwarded by the defendants' railway to the plaintiff's agent in London. The amount of damage found was £25 for injury done to the meat by delay in forwarding and delivering the same; and such injury was alleged to have been occasioned by the neglect of the defendants and their servants, who did not forward and deliver the meat within a reasonable time after it was entrusted to them.

The risk note, signed by plaintiff, was as follows:—

"No. 6,—London and North Western Railway,—Park-lane Station, Dec. 19th, 1855.

"Hay and straw, furniture, glass, marble, china, castings and other brittle and hazardous articles, &c., conveyed at risk of owners.—Delivered to the London and North Western Railway Company.

"From R. C. Dunham—3 crates beef.

"For R. Duckworth, Newgate Market.

"To be forwarded from Liverpool to London at owner's risk.

"R. C. DUNHAM, Owner."

The judge of the County Court, before whom the case was tried, found that the conditions were unjust and unreasonable, but he did not state the circumstances.

Mr. Bovill for appellants; Messrs. Uuthank and Mills for respondents.—The same question arose, viz., if a special contract was binding—whether its conditions were reasonable or not.

Chief-Justice JERVIS delivered judgment in both cases: It seems to me in this case that it was the intention of the legislature, so far as I can gather from this very obscurely worded section, to place the whole railway system under the control of the courts. The previous section gives large powers to the Court of Common Pleas; but then there are various other questions which will arise which cannot be determined by that Court alone, some of which are with reference to what was then complained of, special contracts resulting from notices published, which prevented the parties recovering, when in truth they were bound by the

monopoly of the Company and could carry in no other way; and it is intended to prevent that—by a rather rough mode of justice, undoubtedly—in the section now under discussion. The fair meaning of the section is this—"We will declare that all notices and conditions which heretofore were given, and by which the public were affected by knowledge or notice shall be null and void in so far as they relieve the Company from responsibility for the negligence of its officers, but we shall not prevent conditions being made between the Company and the parties, as a subsequent part of the clause shews, which shall appear to be just and reasonable by the presiding Judge of the Court before whom the question comes." And then in order to be binding and avoid all discussion, "although just and reasonable, the arrangement shall not be binding on the party unless it be signed by the party who is to be affected by it." Therefore the section will run thus. "General notice to limit the liability shall be null and void; but the parties may make special contracts with the Company themselves, provided those contracts are adjudged by the Court or Judge to be just and reasonable; and whereas on the one hand you complain that the monopoly of the Company compels the public willingly or unwillingly to carry by that particular conveyance and to be drawn as it were into contracts; we will give them the security of the courts to take care that the contracts made under that species of compulsion are just and reasonable." Applying that rule to Simons and Great Western Railway Company, we say the conditions of the contract must be just and reasonable, and we say that the fourth plea which is based on the special mileage in proportion to the risk incurred is a good plea, such a regulation being just and reasonable. On the other hand, I think the third plea bad, because it seeks to relieve the Company from a *loss* by insufficient packing, it being quite immaterial whether the goods are properly packed or not if the whole package is lost, and they rely upon that as a ground of relief. We are bound to look at the matters relied upon to see they are reasonable, and not entitled to look through all the regulations, some of which are not relied upon, to see if they are just and reasonable.

Judgment was entered up, generally, for defendants.

With respect to the London and North Western Railway Company and Dunham, the same rule was applied, and the case sent down to be restated, so that the Court might have all the circumstances before them to decide whether the terms were or not just and reasonable; but the case was settled out of Court.

Nov. 5, 1856.—PARDINGTON v. SOUTH WALES RAILWAY COMPANY.

(26 LAW JOURNAL, EXC. 105.)

Reasonable condition as to injury to Cattle.

The declaration was against the defendants as carriers for hire and reward, who had undertaken safely and securely to carry certain cattle, and it charged them with carelessness and want of skill in the carriage of the cattle, whereby several were suffocated and died, and others were deteriorated in value.

The defendants pleaded—1st, Not guilty, and 2ndly. That the plaintiff did not deliver the cattle to be safely and securely conveyed as aforesaid. 3rdly. That the cattle were delivered and received by them to be carried from Newport to Gloucester, under a special contract which freed the defendant from risk or responsibility in respect of the matters in the plea set forth, that the damage arose in respect of such matters, and was not occasioned by the negligence of defendants' or their servants. The cause was tried before Baron Alderson at the Gloucester Summer Assizes, 1856. It appeared that the cattle in question were purchased by Thomas Morgan, the plaintiff's agent at Llandovery, and were delivered to the defendants' railway at Newport, on the 12th of March, to be conveyed to the plaintiff at Gloucester. The following "Receiving Note" was filled up, and then signed by Morgan:—

"South Wales Railway.—Cattle Receiving Note.—Goods Department.—Cattle, sheep, &c., will be conveyed on this railway at the rate of 6d per truck, per mile, [&c.] A pass for a drover to ride with his stock, will be given for every ten beasts, [&c.] All carriage must be pre-paid, except under special arrangement, and the stock will only be conveyed on the following conditions:—The Company is to be held free from all risk or responsibility in respect of any loss or damage arising in the loading or unloading, from suffocation, or from being trampled on, bruised, or otherwise injured in transit, from fire, or from any other cause whatsoever.—The Company is not to be held responsible for carriage or delivery within any certain or definite time, nor in time for any particular market." [Then followed stipulations as to the time at which cattle must be at the station, special notice of large numbers, and as to forwarding them by any particular train.]

"N.B.—The form below is to be filled up and signed by the party desiring to send cattle, and by him forwarded to the superintendent of the station, whence they are proposed to be sent, in time for the necessary waggons to be prepared for that purpose; and unless this and the foregoing rules be complied with, the cattle will not go forward.

MARCH 12, 1856.—To Messrs. the South Wales Railway Company.—In conformity to the above regulations with regard to the conveyance of cattle and live stock, I request that 2 trucks may be ready at the Newport Station, in which I may load 33 cattle, to be conveyed from Newport station, to Gloucester station, for Mr. George Pardington, of Gloucester, on the conditions above mentioned.—£2. 5s., paid."

"Signed, THOMAS MORGAN, sender."

A drover's free pass ticket was given to the plaintiff's servant, but instead of his travelling in one of the trucks with his master's cattle, according to the regulations, he was allowed to travel with the guard of the train in the break. The cattle were conveyed in covered vans intended for salt, but were thus employed without objection by the plaintiff's agent; and on arriving at Gloucester, it was found that the lid of one of them, which ought to have been kept partly open by an iron pin, had by some means unexplained, closed during the journey, and out of sixteen cattle in the van, ten were dead and four others seriously injured.

On these facts the learned Judge thought the Company was protected; and directed a verdict to be entered for the defendants, with leave to the plaintiff to move to enter the verdict for £135.

Mr. KEATING (Mr. GRAY with him) now moved accordingly: The question is, whether the conditions in the contract which the defendants rely on, can be said to be reasonable within the meaning of the Railway and Canal Act, 17 and 18 Vict. c. 31. s. 7. There was evidence of negligence. In the first place, the trucks were of an improper description; but even if fit for the purpose, it was only by having the lid kept properly open.

B. BRAMWELL.—The first part of the section only applies to general notices; but companies are permitted to give notices to particular persons, if they are reasonable. It seems strange that the defendants should be made to pay for this damage. He referred to *Wise v. the Great Western Railway Company.*

The Court of Common Pleas holds that special contracts under the statute must be reasonable—*(Simons v. the Great Western Railway Company, the North-Western Railway Company v. Dunham.)* (See Ante.)

[B. MARTIN: The common law liability of common carriers does not apply to cattle at all. In former days they were not carried. They might, therefore, but for the statute, make what conditions they pleased.]

[C. B. POLLOCK: They only hold themselves out as carriers of horses and cattle sub modo.]

Mr. KEATING: Here there was evidence that the injury arose from the *negligence* of the defendants' servants. Even if the notice relieved them from liability for accidental injuries, it does not do so when their servants are in fault.

C. B. POLLOCK:—I am of opinion that there ought to be no rule. It appears to me quite reasonable that such a stipulation should be made, as was made in the present case. Accommodation is provided by the company for the cattle which are to be carried; the drovers are permitted to go with them, and they have full opportunity of knowing whether the accommodation provided is sufficient or not. The plaintiff had been expressly told beforehand what the terms were upon which the cattle were to be received and carried, and he has no right now, to say, those terms are unreasonable.

B. MARTIN.—I am of the same opinion. I think it is reason-

able to make such a condition as that which is depended upon in the present case. It appears that during the journey the lid fell down, and that the cattle were suffocated. I doubt the liability of the Company at all, even if there had been no stipulation on their part; for the fault, if any, was the fault of those who went by the train with the cattle. It is quite reasonable that the Company should give notice, and, as in this case there was a special contract, they must abide by it.

B. BRAMWELL: I am of the same opinion. I think the proper construction of the Act is, that the Company shall not be allowed by giving general notices, conditions, or declarations to free themselves from liability from the loss or injury to the cattle carried by them; but that they may do so by making such conditions as shall appear just and reasonable. That is quite consistent with their making a special contract with the party for whom they carry with a view of protecting themselves from liability. It would be quite monstrous to say that such a bargain might not be made between man and man. It seems reasonable that the Company should say, "We will not be liable for any injury done to the cattle by our servants"—they receive a smaller sum for the carriage of the cattle, in consequence of exemption by the contract from liability, and it would be very strange if we were to hold, after such a contract, the owner of the cattle might recover. The question of reasonableness under the statute does not, I think, arise; but, if it does, I think such a notice would be reasonable.

B. ALDERSON.—I thought at the trial this contract was reasonable, and I think so now. Besides, I think the negligence was really that of the plaintiff's servants, and that on that ground also the defendants are not liable.

Rule refused.

JAN. 26, 1858.—McMANUS v. THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY.

(27 LAW JOURNAL REPORTS, 201 C. P.)

Risk in conveyance of live stock—Defective trucks—Reasonable condition.

Declaration, that the defendants were proprietors of the Lancashire and Yorkshire Railway, and certain trucks and carriages, and the plaintiff employed them, the defendants to provide, and the defendants then provided for the plaintiff, certain trucks and carriages, to be used upon the said railway, for the conveyance of horses of the plaintiff from Liverpool to York, for hire and reward to be paid by the plaintiff; and the defendants therefore, in consideration of the said employment, promised that the said trucks and carriages should be reasonably fit for the carriage and conveyance of the said horses; yet the defendants did not observe or keep their said promise, but broke it in this, that the said trucks and carriages were not reasonably fit for the

conveyance of the said horses, whereby the latter were injured and deteriorated in value.

Pleas—first, that the defendants did not promise, as alleged; secondly, that at the time of the said providing, the said trucks and carriages were reasonably fit and proper for the carriage and conveyance of the said horses; thirdly, that the said promise was made subject to the terms that the plaintiff should undertake *all risks whatever*, of the carriage and conveyance by the defendants of the said horses; and that the defendants would not be responsible for any injury or damage, howsoever caused, occurring to the said horses, whilst being carried and conveyed upon the said railway, as aforesaid; and that the said damage and injury occurred to the said horses whilst being carried and conveyed upon the said railway.

The Plaintiff joined and took issue on these pleas.

At the trial, before B. Watson; at the last Summer Assizes for Liverpool, it appeared that the plaintiff, on the 16th of December, 1856, brought three horses to the Cattle Station of the defendants' railway at Liverpool, to be forwarded by a cattle truck to York. The defendants' servant at the station provided a truck for the purpose of the horses being loaded therein, and the truck, to external appearance, and so far as the servants knew, was sufficient for the purpose. The plaintiff paid at the rate of 2d. per mile (the charge for three horses laden at the Cattle Station) for forwarding the horses to York, and then signed a ticket, headed "Live Stock Department," specifying that rate, and that the amount (£2 10s) had been paid. Below these particulars were these words:—"N.B. This ticket is issued subject to the owners' undertaking all risks of conveyance, loading, and unloading whatsoever, as the Company will not be responsible for any injury or damage (howsoever caused) occurring to live stock, of any description, travelling upon the Lancashire and Yorkshire Railway, or in their vehicles. H. M'Manus, owner, or on the owners' behalf, agrees to the above terms." The horses were put in the truck and forwarded by a cattle train. The truck proved, as the fact was, to be insufficient for the safe carriage of the horses, and a hole was made in the bottom, the floor giving way, so that one of the horses was injured to the extent of £25. It appeared that horses laden at the Cattle Station are always forwarded in open trucks of the construction of that used in the present case, under tickets in the above form, and trucks are forwarded from the Cattle Station by a cattle or luggage train. At the Passengers' Station, horses are taken at the rate of 4d. a horse per mile, and forwarded in horse boxes by ordinary (usually passengers') trains. The ticket in such cases is headed, "Horse, Carriage, and Dog Ticket," and the foot-note required to be signed is in this form:—"N.B. This ticket is issued subject to the owners' undertaking all risks of conveyance whatsoever, as the Company will not be responsible for any injury or damage (howsoever caused) occurring to horses, carriages, or live stock of

any description, travelling upon the Lancashire and Yorkshire Railway, or in their vehicles." Upon the above facts (which were agreed to in writing) a verdict by consent was taken for the plaintiff, with leave to move to enter the verdict for the defendants, upon the ground that the defendants were not responsible for the injury and damages of which plaintiff complained.

A rule having been accordingly obtained, was argued November 24th, 1857, before C. B. Pollock, B. Martin, B. Bramwell, and B. Channell; and January 15, 1858, before C. B. Pollock, B. Martin, B. Watson, and B. Channell.

Blackburn, and Brett, for the plaintiff, and Hugh Hill, and J. Addison, for the Company.

Baron Martin delivered judgment: Two points were made on behalf of the plaintiff; first, that the terms of the notice did not extend to protect against a defect in the truck itself; and secondly, if they did, the notice was not reasonable, and ought to be entirely disregarded, under the authority given by the statute 17 and 18 Vic., C. 31, the Railway and Canal Traffic Act. To this it was answered by the defendants, first, the notice was reasonable, for which two authorities were cited, namely, Simons *v.* the Great Western Railway Company, and Pardington *v.* the South Wales Railway Company, and that if so, it protected the defendants for which Chippendale *v.* the Lancashire and Yorkshire Railway Company was cited; but that even supposing it was rejected as unreasonable, the defendants were not responsible, there being no negligence shewn, and the rule as to the liabilities of carriers for all losses not caused by the act of God, or the Queen's enemies, did not extend to horses or live animals. We are of opinion that the cases cited in the argument decided and must govern the present case. In Simon *v.* the Great Western Railway Company, 18 C.B., 805, 26 Law J., C.P. 25, the Court of Common Pleas held that the 15th clause of the notice of the Great Western Railway, namely, "that goods conveyed at special or mileage rates, must be loaded and unloaded by the owners or their agents, and the company will not be responsible for any risk of stowage, loss, or damage, howsoever caused, nor for discrepancy in the delivery, as to either quantity, number, or weight, nor for the condition of articles so carried, nor for detention or delay in the conveying and delivering of them, however caused," was reasonable within the statute. In Pardington *v.* the South Wales Railway Company, 26 Law J., Exch. 105, the Court held "that a memorandum relating to live animals, that the company are to be held free from all risk and responsibility in respect of any loss or damage arising on the loading or unloading from suffocation, or from being trampled upon, bruised, or otherwise injured in the transit, from fire, and from any other cause whatever," was reasonable. It seems to us that these notices are not so extensive as the one now in question, and that our judgment must be that the notice is reasonable Then, if that be so, the case of Chippendale *v.* the Lancashire and Yorkshire Railway Company,

21 Law J., Q.B. 22 furnishes a direct authority that it extends to defects in the trucks. In that case the notice was the same as the present; the jury had found that the truck was unfit and unsafe for the conveyance of cattle, and that the damage was consequent upon it. Mr. Justice Coleridge and Mr. Justice Erle held that the notice protected the company. The case is expressly in point, and we concur in it. We think one of the risks of conveyance of live cattle is the risk of their breaking the trucks, or boxes in which they are conveyed. We are able to decide this case without referring to the second point made by the defendants, namely, the alleged distinction between the liability of carriers, as to the conveyance of horses and live stock, and ordinary goods; but, should the question ever arise, we think the observation which fell from Baron Parke, in Carr *v.* The Lancashire and Yorkshire Railway Company, 7 Exchequer Reports, 707. 21 Law Journal, Exchequer 261, is entitled to much consideration. Our judgment will, therefore, be for the defendants.

Judgment for the defendants.

PEAKE v. THE NORTH STAFFORDSHIRE RAILWAY COMPANY.

(LAW TIMES REPORTS, VOL. 32—71.)

Railway Carriers—A special contract—under 17 *&* 18 *Vic. c.* 31, *s.* 7. *must be signed. An unsigned condition although communicated and assented to is not sufficient.—(Erle J. Dissentient.)*

This was an action brought against the defendants as common carriers for negligence, causing injuries to certain marble chimney pieces whilst conveyed along their railway. It appeared that the plaintiff, having occasion to send the chimney pieces in question they were safely packed up in three cases and deposited at the station of the defendants before being sent on. Whilst there the plaintiff saw the carter of the company, and inquired of him what would be the rate of insurance on marble, and a message was sent him that it would be according to the value of the goods. Ultimately directions were given by the plaintiff to the defendants by letter to forward the cases uninsured. They were accordingly forwarded, and when they arrived at their destination they were found to be injured. For this injury the action was brought. The defendants, amongst other pleas, pleaded, fourthly, that the goods in question were delivered to and received by the defendants after the passing of the Railway Traffic Act (17 & 18 Vict. c. 31), to be carried under and subject to a certain special contract in that behalf, signed by one George Whittingham for, and on account of one Charles Meigh, who was the person delivering the goods to the defendants for carriage, whereby it was agreed that the defendants should not be responsible for the loss or injury to marbles un-

less declared and insured, and that the goods in question were marbles,and were not declared or insured. They pleaded, fifthly, that the goods in question were delivered and received after the passing of the said statute, under and subject to a certain just and reasonable condition made by the defendants and assented to by the plaintiff, with respect to the receiving, forwarding and delivering the said goods, that is to say, that the defendants should not nor would be responsible for the loss or injury to marbles unless declared and insured according to their value, and that the goods in question were marbles, and were not declared or insured. At the trial a verdict was found for the defendants upon the fourth and fifth pleas, with leave to the plaintiff to move to enter a verdict for him upon those pleas for 52*l.* damages.

The case turned upon sect. 7 of the Railway Traffic Act, 17 and 18 Vict. c. 31; as to conditions and special contract.

Mr. E. JAMES, Q.C., accordingly moved for a rule to enter the verdict for the plaintiff, upon the fourth and fifth pleas, or for judgment *non obstante veredicto.*

Mr. PHIPSON now (9th June) showed cause.

Mr. HAWKINS and Mr. GORDON ALLEN in support of the rule.

The facts and the arguments sufficiently appear in the following judgments.

The following cases were cited:—*Pardington* v. *The South Wales Railway Company,* 1 Hur. & Nor. 392; *Wylde* v. *Pickford,* 8. M. & W. 493; *White* v. *The Great Western Railway Company,* 26 L. J. 158, C.P.; *Simons* v. *The Great Western Railway Company,* 18 C.P. 825; *M'Manus* v. *The Lancashire and Yorkshire Railway Company,* 27 L. J. 201, C.P.; *Walker* v. *The York and North Midland Railway Company,* 2 Ell.& Bl. 750; *The London and North-Western Railway Company* v. *Dunham.* 18 C.B. 829. *Cur. adv. vult.*

July 8.—Mr. J. CROMPTON.—The declaration in this case charged the defendants as common carriers for hire *with negligence* by means of which the plaintiff's goods received by them to be carried were injured through their default. A verdict was found for the defendants at the trial on the fourth and fifth pleas, with leave for the plaintiff to move to enter a verdict for him on those pleas, and a rule was accordingly granted to enter the verdict for the plaintiff, or for judgment *non obstante* the verdict on those pleas. The fourth plea stated that the goods in question were delivered to and received by the defendants after the passing of the Railway Traffic Act, to be carried under and subject to a certain special contract in that behalf signed by one, George Whittingham, for and on account of one Charles Meigh, who was the person delivering the goods to the defendants for carriage, whereby it was agreed that the defendants should not be responsible for the loss or injury to marbles unless declared and insured according to their value; and that the goods in question were marbles, and were not declared or insured. The question as to this plea was whether it was proved. The alleged contract was

a note signed as stated in the plea, by which the defendants were directed to forward the marbles uninsured. And it was argued before us that this note was proof of a sufficient contract signed under the statute to the effect stated in the plea, when accompanied and explained by evidence from which it might be inferred that the plaintiff, by having seen the printed conditions of the company, and by having had conversations as to the terms on which they carried such goods, must have known that if the goods were forwarded uninsured the Company by their conditions would not be responsible for the loss or injury to the marbles. The note did not refer to any printed or written document, or to conditions, but was simply an order to forward uninsured, and I am of opinion that it did not prove the signed contract alleged. It is only by admitting parol evidence of what, by the company's regulations, was to be the consequence of noninsurance, that there can be any pretence that the note amounted to such an agreement as alleged; and I am of opinion that the contract itself must be looked to, and that it contains no written terms, and no reference to any written document from which anything like the terms alleged in the plea can be collected. The only mode in which it was suggested by Mr. Phipson that he could make out the plea, was by the admission of the parol evidence to explain the meaning of the term "uninsured." There is, however, no ambiguity about that word, nor was any explanation of it necessary, but the object of the evidence was to shew the arbitrary consequences which this particular Company had, by themselves or by verbal conversations with the plaintiff, affixed to the non-insuring: such evidence would not be given to explain the meaning of a mercantile word, but would be given to prove the particular conditions of this Company. It seems to me that we cannot hold the order to forward uninsured as necessarily meaning, in point of law, that the company are not to be responsible in case of loss or injury, however occasioned. Carriers are said to be in the nature of insurers, so as to be liable in cases of fire, robbery, and other circumstances where bailees of another description might not be liable; but even if the agreement that the goods should not be insured could be taken as doing away with such common law liability of the carriers and insurers, they would still be liable for losses by negligence through their own default, with which the defendants are charged in this declaration. The consequences they attach by their conditions to non-insurance may be that they would be liable only to a particular amount or under particular circumstances, and it appears to me quite impossible that without the parol declaration any guess could be made as to what the contract was between the parties if the law still allowed a contract of this nature. In my opinion, the note ordering the goods to be forwarded uninsured, did not by legal intendment *per se* show that the goods were as stated in the plea, agreed to be carried without the company being responsible for loss or injury, nor was there any legitimate evidence to show that such was the

meaning of the written contract. In reality, the contract was a parol one, which would have been good before the statute, and which might have been well collected from the oral evidence before that enactment; but there was not any such signed contract in writing as is required by the statute and alleged in the fourth plea; and I think therefore that the plaintiff is entitled to have the issue on the fourth plea entered for him. The fifth plea stated that the goods in question were delivered and received after the passing of the said statute under and subject to a certain just and reasonable condition made by the defendants and assented to by the plaintiff, with respect to the receiving, forwarding and delivering the said goods—that is to say, that the defendants should not nor would be responsible for the loss or injury to marbles unless declared and insured according to their value, and that the goods in question were marbles and were not declared or insured. With respect to this plea the question arose, whether a just and reasonable condition imposed by the railway company and assented to by the party delivering the goods for carriage, but not in writing signed by each party, is binding. I think that the plea sets up a special contract between the company and the plaintiff respecting the receiving, forwarding, and delivering of the goods, and that there being no such contract signed by the party, the plaintiff is not bound. By the enactment in question all notices, conditions, and declarations limiting the liability of the company *as to loss by their neglect or default* are made void with certain exceptions. The company may still protect themselves by the notices published under the Carriers' Act in the particular mode there pointed out as to particular articles enumerated in that Act; and by the Railway Traffic Act they may make "conditions with respect to receiving, forwarding and delivering goods which the court or judge trying the cause may adjudge to be just and reasonable. Such conditions, whether verbal or not, can only operate by way of contract between the parties, and the plea in question therefore necessarily avers the assent of the plaintiff. The Carriers' Act having prevented such notices being valid, it was still held that if the plaintiff assent to such conditions or notices, a special contract arose which was valid under that Act, and until the last statute such special contract might be made without writing or signature; but by several decisions it was most properly held that the operation of such condition on the one part and assent on the other was, that a special contract arose which limited the liability of the carrier. In the case of *Walker* v. *The York and North Midland Railway Company*, 2 E. & B. 750, it was held that such a contract arose, although the plaintiff had expressly refused his assent in the first instance, he having afterwards sent the goods with notice to him of the terms on which alone the company would carry; and it was held that his so sending the goods was evidence of his assent. This state of the law may have led the Legislature to think it advisable that no

party should be bound by such a contract unless he had signed a paper containing the terms of it. They expressly enact that no special contract between a railway company and another party respecting the receiving, forwarding and delivering goods shall be binding unless signed. The present case appears to me to be within the words and meaning of this proviso; and I think that the true construction of the statute is that pointed out by the late Chief Justice of the C. P. in *Simons* v. *The Great Western Railway Company*, 18 C. B. 819; and that conditions to operate by way of special contract—which is the only way in which I think they can operate in cases like the present—are special contracts, and require signatures under the proviso of the statute. If they are conditions as to receiving, &c., they must be just and reasonable to have the effect of limiting their liability in case of loss from their negligence and default, and if they are to operate as special contracts, they must, in my opinion, be signed according to the Act. The Legislature may well have intended to include such a case as the present, and it may be remembered that in this proviso they have used the very same words as to "receiving, forwarding, and delivering" as they have used in the proviso as to conditions and notices. Very learned persons have expressed opinions that a special contract within the last proviso need not be reasonable as a condition under the earlier one; but I find nothing like a distinct decision that a signed contract is not necessary in a case like the present. The authority most in point is the judgment delivered in the case of *Simons* v. *The Great Western Railway Company*, 18 C. B. 819, and the following case of *The London and North-Western Railway Company* v. *Dunham*. It is true that in these cases there were signed contracts, but the court considered and put a construction on the statute, and acted upon such construction in deciding the cases, and they there held distinctly that such a contract as that in the present case must be just and reasonable, and must also be signed. C. J. Jervis, in giving judgment in the above cases, after explaining the statute, says: "The result appears to be this—a general notice is void, but a Company may make special contracts with their customers, provided they are just and reasonable, and signed. And whereas the monopoly created by Railway Companies compels the public to employ them in the conveyance of their goods, the Legislature have thought fit to impose the further security that the court shall see that the condition of such special contracts is just and reasonable." I think the condition or agreement in the present case was not binding on the plaintiff. The question was argued before us on the validity of the plea, as containing no allegation that the condition in question was in writing and signed; but as the plea alleges that the defendants made the condition and that the plaintiff assented to it, and as I am of opinion that by the statute there was no binding assent, I think that the plaintiff is entitled to have the verdict as well as judgment entered for him on this plea. I think, therefore, that the plaintiff is entitled to our judgment on the whole record.

J. ERLE.—In this case the questions are, first, whether the fourth plea was proved; and secondly, whether the fifth plea was good. The declaration was for not safely carrying marbles. The fourth plea alleged a special contract signed by the plaintiff that the marbles were to be carried by the terms therein set out. The evidence was, that the marbles were left to be forwarded; that the plaintiff by his agent discussed the terms applicable to forwarding marbles, either at the Company's risk if insured, or at the owner's risk if uninsured, and then signed the order to the defendants to forward them uninsured. A written contract is to be construed with the surrounding circumstances. These showed that the goods were marbles, and the prepayment of the carriage was not offered. The legal effect of the signed order then is this: in consideration of defendants forwarding the goods as they are, the plaintiff promises to give up his common law right to make the defendants insurers—that is, he agrees that the goods shall be uninsured. The circumstances showed that the plaintiff by his order meant to express the sense that would prove the plea, and that the defendants so understood it. If that be true, the plea was proved. The ordinary meaning of insured is, that the insurer stands the risk; and uninsured, that the owner does so. The inconvenience of requiring every contract to be written out in full is very great. The special contract for carriage set out in *Simons* v. *The Great Western Railway Company*, 18 C. B. 808, fills pages of reports, and if any part of such contract should be thought by the judge unreasonable, the whole may be held void. The result of the judgment in *Wain* v. *Walter* respecting contracts under the Statute of Frauds, is a warning against limiting a decision which only operates when the absence of an unmeaning form defeats a substantial right. Both parties here understood from the writing the terms on which the marbles were to be carried. Yet the construction contended for by the plaintiff would defeat the right of the defendants according to that understanding, and would get judgment in favour of what would be equivalent to a deception. In *Wyld* v. *Pickford*, 8 M. & W. 444, the declaration was, as here, against common carriers for not carrying maps. The third plea was a notice that the defendants would not be responsible for maps unless insured, and it was held a good plea on the ground that a delivery of maps with knowledge of the notice was an agreement that the common law liability should be limited by the notice, and that the plea sufficiently alleged such an agreement, although it did not allege the plaintiff's consent. If the same intendments that were made there were made in this case the plea would be proved, and if after such notice such articles are delivered, the agreement is to perform all the common law duties of carriers except insuring, and if there is a notice against insuring the risk is the owner's. The same intendments would make the order relied on to prove the fourth plea a special contract, and I am of opinion that they ought to be made, and that the fourth plea should be held to be proved. The question raised by

the fifth plea turns on the construction of the 7th section of the statute. The plaintiff contends that all contracts tending to limit responsibility for default or neglect in the carriage of goods are thereby made void unless they are signed by the opposite party, and also adjudged to be just and reasonable by the presiding judge. The plea relies on a contract adjudged by the judge to be just and reasonable, but not signed. The defendants contend that the clause making void all notices, conditions and declarations given by the company limiting their liability on the carriage of goods, relates to the general notices which have been resorted to by carriers from time to time, and which, before railways existed, were the subject of legislation in the 11 Geo. 4 & 1 Will. 4, c. 68; and that this clause making void all notices, &c., given by companies for limiting liability is subject to the exception of such notices, &c., as shall be adjudged to be just and reasonable; but that special contracts entered into by both parties are contradistinguished from the notices, &c., given by the companies, and that as to them the proviso assumes that they may be made, but shall not be enforced by the railway unless signed by the opposite party. If the Legislature intended to make all contracts for limiting responsibility of railways void unless adjudged to be just by a judge, and signed by the opposite party, language would be used which would express the law without complexity. But the enactment makes a clear distinction between notices, &c., given by the company which are to be void unless adjudged to be just, &c., and special contracts which are made void for the railway, unless signed by the other party. The context shows that special contracts in the latter proviso are different from the notices, &c., spoken of in the earlier proviso, there being distinct provisoes about animals and other matters interposed. The stat. of the 11 Geo. 4 & 1 Will. 4, incorporated in this Act, confirms this construction, as by sect. 1 all notices, &c. are made void, while by sect. 6 the power of making such special contracts as the parties may choose is expressly preserved. The purpose of the Legislature confirms this view. As a general rule common carriers must take what is brought for carriage, and must carry safely and deliver correctly; in effect, they must insure against the risk of the journey. This extreme responsibility by compulsion has produced by carriers for protection, conditions which have been thought to be in the opposite extreme, such as general notices to have no responsibility for certain articles. Extreme notices may with reason be declared null and void; reasonable notices are allowed to be valid, and so are the words of the enactment, and so is the defendants' construction. The plaintiff's construction involves the notion that the Legislature in effect invaded the rights of private property invested in railways, and not only subjected the railway proprietors to the discretion of various courts in the management of their property, and prohibited them from consulting their own interest or following their own

plans as they might choose; but also by the 7th section made them subject to the duty of carrying whatever should be offered, without any power either of limiting their responsibility of making any contracts as interest might require, unless their contracts fulfilled the two conditions of being signed when they are made and being adjudged to be reasonable by the judge before whom they might be brought for enforcement. The extent of the risk of leaving an arbitrary discretion to the judge to say whether a contract is reasonable may be estimated from *Simons* v. *The Great-Western Railway Company*, 18 C. B. 830, where a contract that a company should not be answerable for loss or non-delivery of the goods by reason of insufficient and improper package was adjudged void; and from *Munster* v. *The South-Western Railway Company*, C. P. Trinity Term 1858, in which a regulation that passengers should not place wearing apparel, shawls, and the like, in the luggage van without some wrapper to cover them, was also held void. As to authorities on this question, *Simons* v. *The Great Western Railway Company*, and *The London and North-Western* v. *Dunham* are in favour of the plaintiff. But *Wise* v. *The Great Western Railway Company*, cited *arguendo* in *Simons* v. *The Great Western Railway Company*, 18 C.B. 823, is in favour of the defendants, and as I entirely concur with the opinions of Pollock, C.B. and Bramwell, B. there cited, I consider myself at liberty to dissent from the opposite opinion expressed by Jervis, C. J. in the other case. In my opinion the fifth plea is good.

Lord CAMPBELL, C. J.—In this case I agree with my brother Crompton that the plaintiff is entitled to our judgment both on the fourth and fifth pleas. As to the fourth plea, notwithstanding my sincere respect for the opinions of my brother Erle, I am bound to confess that I have never been able to entertain any doubt. It is expressly pleaded under the 17 & 18 Vict. c. 71, s. 7, and it is expressly alleged as a special written contract whereby it was agreed that the defendants should not be responsible for the loss of or injury to marbles unless declared and insured according to their value. The only written document signed as required by the statute was a note by which the defendants were directed "to forward the marbles uninsured." This refers to no other written document, and the alleged contract could only be made out by parol evidence, which the Legislature clearly intended should not be admitted for limiting the liability of railway companies. I do not think that we can properly listen to arguments from the supposed hardship upon the defendants in this particular case; and for the future Railway Companies may easily render themselves secure by having printed forms of their special contracts to be signed by the person delivering the animals or goods as the Act requires. The fifth plea depends entirely on the construction to be put on one of the many provisoes to be found in the 7th section of the 17 and 18 Vict. c. 31. This section is exceedingly ill drawn, heaping proviso upon proviso, and forgetting the distinc-

tion between an enactment and a proviso to qualify an enactment, introduced by the words "provided also." It contains the following enactment: "No special contract between such Company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as addressed, shall be binding upon or affect any such party, unless the same be signed by him, or by the person delivering such animals, articles, goods or things respectively, for carriage." The fifth plea does not allege that the condition or agreement made by the defendants with respect to the insuring, forwarding and delivering the marbles was in writing or signed by the party; but alleges that the plaintiff assented to it. I think that this raises the question whether the condition must be in writing, and signed as the above enactment requires. Is this condition, with respect to the receiving, forwarding and delivering goods, a special contract between such company and the plaintiff respecting the receiving, forwarding and delivering goods? I cannot discover why it is not; and if it be, then it is not binding, because it is not signed as required. I own it is not a special contract between the company and the plaintiff because, to be valid, it must be "adjudged by the court or judge before whom any question relating thereto shall be tried to be just and reasonable." The defendants' counsel contend that this condition was written or signed. Therefore, if it constituted a special contract, it is not binding; and the fifth plea is not proved. This seems to be in accordance with the view taken of the statute by Jervis C. J., 18 C. B. 819, in which I entirely concur. In the argument at the bar we were told of the impolicy and injustice of such an interference with the contracts of railway companies; but when the meaning of the Legislature is clear from the language of an Act of Parliament, I do not feel myself at liberty in construing it to form any opinion whether it be impolitic, just or unjust. I sit here *jus discere, non jus dare.* An absurd or mischievous enactment is to be repealed by the Legislature and not by judicial decision. Therefore, with great deference for all who entertain a contrary opinion on this subject, I think that the plaintiff is entitled to have the verdict entered for him on the fourth and fifth pleas, with the damages, found by the jury, and that the rule obtained for that purpose ought to be absolute.

Rule absolute.

JANUARY, 1858—GASTON AND ANOTHER v. BRISTOL AND EXETER RAILWAY COMPANY.

(32 LAW TIMES REPORTS, 284.)

Unequal Rule as between the Public and a Carrier—Unreasonable charge for Packed Parcels.

This was a special case stated by order of a Court of Nisi Prius. One ground of dispute, arising out of a clause in the local act, is immaterial to the subject of this treatise. As to the other points the case found that if a common carrier's servant took a parcel to

defendants' office he was always asked whether it was a packed parcel, and if he stated it was, an extra 50 per cent. on the carriage was demanded. It was well known that persons engaged in various trades were in the habit of sending packed parcels, but no questions were ever asked their servants, nor any extra rate demanded. The question was, whether the conduct of the Company was unequal in making these enquiries of carriers and not of others, and whether the charge of 50 per cent. extra was reasonable. The case found expressly that there was *some* (but very little) extra risk in carrying packed parcels.

Mr. COLLIER, Q.C., for the plaintiffs, referred to *Crouch v. The Great Northern Railway Company*, 11 Exchequer 742. *Parker v. The Great Western Railway Company*, 11 C.B. 545.

Mr. BUTT, Q.C., Sergeant KINGLAKE and Mr. SMITH, Q.C., for the defendants.

Chief Baron POLLOCK: I think the conduct of the defendants in asking the questions as to packed parcels of carriers and not of others is unequal; as to the extra rate, the case finds that the extra risk is almost inappreciable, and therefore I think the rate of 50 per cent. is unreasonable.

Baron MARTIN: It is clear the Company have made a difference between common carriers and others, and they cannot be justified in charging an extra rate to one man and not to another. As to the extra rate, if there are some species of packed parcels which involve some extra risk, then some extra charge would be reasonable but this charge on such parcels cannot be justified The conduct of the Company in this case is part of a long continued attempt to put down a class of traders who come into competition with them. They have in a great measure succeeded; but it has been by wrong and not by right.

Baron WATSON and Baron CHANNEL concurred. Some inappreciable risk would not justify an extra charge of 50 per cent.

Judgment for the Plaintiff.

FEB. 11, 1858.—BAXENDALE v. THE EASTERN COUNTIES RAILWAY COMPANY.

(27 LAW JOURNAL, C.P. 137)

It is reasonable to charge something extra for several parcels for the same carrier, addressed to several consignees.

This was an action brought by the plaintiffs to recover back what was alleged to be an excessive charge by the defendants for the carriage of parcels. It appeared that the railway company, according to one of their rules, charge for the carriage of small parcels a higher rate than for heavy goods; but if the small parcels, whether loose or packed together, are directed to one person, or have a common mark upon them so as to be weighed at once and so that one entry in the books is sufficient, they carry them at the same rate as heavy goods. The complainants are carriers

under the name of "Pickford and Co.," who collect parcels from different persons and forward them to their destination by the railway of the defendants, and they required the defendants to carry such parcels, although directed to different persons, at the same rate as if they were packed in one parcel or directed to the same individual. This the defendants refused to do, on the ground that it gave them additional trouble.

Mr. C. POLLOCK, for the plaintiffs: Pickford and Co. are the consignors and the consignees; the parcels are delivered by them at the station in London, to be re-delivered to themselves at their destination. And the fact of the parcels being directed to different individuals makes no difference. If there were no direction at all upon them, no extra charge would be made.

J. WILLES: Is it not a question for the jury whether these packets, being directed, makes any difference?

Mr. BOVILL, Q.C., for the defendants: There is no undue preference shewn by the defendants in making this difference of charge. The packets being directed to different individuals, the servants of the company have more trouble in entering and weighing the goods, and more trouble also in delivering them. There is nothing in the case to show that the public if they sent parcels in the same way would be treated differently.

Mr. C. POLLOCK in reply.

J. WILLIAMS: I am of opinion that our judgment must be for the defendants. There is nothing on the parcels to show that they were for one consignee. That being so we need not trouble ourselves with the Act of Parliament, for there is nothing to show any partiality. A larger sum is charged where the parcels are directed to different individuals, than where they are shown to be for one consignee. Where they are directed to several persons there is more trouble, and for such additional trouble there is nothing unreasonable in making a larger charge.

J. CROWDER: I am of the same opinion; I found my opinion entirely on the same point. A distinction is made by the defendants which is well understood. If a large number of parcels are addressed to the same individual they are charged for at a less rate than when not addressed to the same individual, although intended for the same consignee. There is nothing on these parcels to show that they are for the same consignee; and there is consequently more trouble with them, and the greater charge is not unreasonable.

J. WILLES: I am of the same opinion. We are to assume that there is no direction on the parcels except that of the persons to whom they are to be delivered on their arrival. No cause of action has been made out. We must assume that certain sums are payable for parcels less than one hundred weight; and that when a number of such parcels are directed to the same person from the same person, they are charged at a tonnage rate; but if they are directed to different persons, they are charged for at a larger rate as for small parcels. The plaintiffs were in the habit

as carriers, of collecting parcels, and sending them by the railway, to be distributed at the other end of the line. They complain that they were called upon to pay at a parcel rate. It is clear that by the terms of the defendants' rule, the plaintiffs are not entitled to recover. It gives a privilege of having small parcels directed to the same person carried at a less rate. Upon that part of the rule the action depends. But these parcels were directed to several persons, and are not within the rule. The direction being to several persons makes every difference. The question is whether that gives additional trouble, and that is answerable by the jury only in one way. When the direction is to one person, the parcels when they arrive may easily be put together. If the directions are different, it would be necessary for the person coming for them to give to the company the names on each packet, and that might impose trouble, an additional charge, therefore, is not unreasonable. Then what is a reasonable sum for that additional charge? It is impossible for us to say whether the charge is reasonable or not: a jury might. It is nowhere stated in the case whether the charge is reasonable or not. I think, therefore, this is a matter for a jury. And upon these facts there must be judgment for the defendants.

J. Byles: It has been decided that packed parcels must be charged for at a tonnage rate. And it is admitted by the company that they must charge the same for loose parcels with a common mark. But this is a case where there is no common mark, and where there may be more trouble given to the company. There is nothing to shew that the additional charge is unreasonable; but the onus of showing that is on the plaintiffs. They should show what would be a reasonable charge.

Judgment for the Defendants.

MARRIOTT'S OMNIBUS CASE.

1857, Jan. 30.—MARRIOTT v. THE LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

(Law Journal Reports, Vol. 26. (N.S.) C.P. 155.)

It appeared from the affidavits on which the rule was moved that the applicant Marriott, was the owner of an omnibus, which ran from the Twickenham station, on the Richmond and Windsor line of railway, to meet the trains at the Kingston station, on the London and South-Western Railway; and that it commenced running on the 27th October last, with passengers and luggage, and also goods and parcels of persons, not passengers, and forwarded the same from Twickenham station, and intermediate places, and delivered them at the Kingston station, for conveyance by the London and South Western Railway. The Kingston station is surrounded by a large yard, inclosed by a brick wall and iron railings, with three sets of double gates for the ingress and

egress of carriages, &c., to and from the station. On the 15th of November, the servants of the South-Western Railway Company refused to admit the applicant's omnibus, and from that day forth refused admittance to it, *which occasioned great inconvenience to the passengers by the omnibus, who were obliged to get out and carry their own luggage a distance of seventy-five feet* from the gate to the station, and on one occasion they lost the train in consequence. The yard is of considerable extent, and more than ample and sufficient for the accommodation of all the public and private carriages coming to the station, and is used by the public generally for that purpose, either on foot or in carriages. A public coach running daily from Horsley and Leatherhead, to the Kingston station, is always admitted into the yard, and also, an omnibus from Kingston-on-Thames, belonging to one Williams.

On the 24th November, the applicant wrote to the railway company, demanding admittance, for his omnibus into the yard, which was refused; and on the 9th of January he received a letter from their attorney stating that at that time, as well as for some time before, Mr. Williams, of Kingston, had provided omnibuses for the traffic to and from Kingston station in connection with their railway, by permission of the directors, and so long as Mr. Williams provided for that traffic to the satisfaction of the directors, they should decline to permit the applicants omnibuses to enter the station-yard at Kingston. Williams provided but one omnibus, and that only for the traffic between the Kingston station and the old town of Kingston-upon-Thames, and which met only some of the trains; whereas the applicant's omnibuses ran to Twickenham, three miles beyond, through Kingston, Hampton Wick, and Teddington, and intermediate places, from which some of the passengers were season ticket holders on the South Western Railway, and was the only public conveyance between the Kingston station and those places, and was of great convenience to the public, and carried as many as fifty passengers in a day. They complained of the conduct of the railway company in refusing admittance to Marriott's omnibus, and of the annoyance and inconvenience occasioned by it to themselves, more especially in wet weather.

Mr. Quain (Jan. 14) on moving the rule, distinguished this application under the Railway Act, from the decision in Barber v. the Midland Railway Company, in which this court decided that an action would not lie against a Railway Company for refusing to admit vehicles within the precincts of their station.

Mr. Bovil and Mr. Hawkins, on the other side, urged the necessity that the admission of public conveyances to the stations of the company, and their proper regulation while in the station-yard, should be under the entire control of the company and their officers, for the purpose of enabling the company to regulate the charges to be made by the proprietors of the said public conveyances, and for preventing unseemly rivalry between such proprietors of public conveyances, to the annoyance of the passengers

travelling upon the railway; and that this control is particularly needed at Kingston station, not only from its vicinity to London, and the number and respectability of its inhabitants, but also from its proximity to Epsom race-course, and the necessity of duly regulating the great increase of traffic to and from the said station at the periodical occurrence of such races; that there was an omnibus running between Kingston station and Kingston and Norbiton, of which one John Williams was the proprietor; that the omnibus accommodation at the Kingston station, provided by Williams, was ample and sufficient for all the present traffic to and from the said station; that by the terms of an arrangement made between the company and Williams, the latter was bound to find and provide any additional omnibus, or omnibuses, to run to and from the said Kingston station as should be required to accommodate the traffic, and that no complaint had been made of the insufficiency of the present omnibus accommodation at the Kingston station; that the complainant formerly worked the said omnibus to and from the said Kingston station and Norbiton, as the same is now worked by Williams; that the said omnibus so started by the complainant, so far as it runs between Kingston station and Kingston, is not required for public accommodation so far as respects Kingston or Norbiton, or any place between Kingston and Norbiton and the said station; that so far as the complainant's omnibuses run from Twickenham station on the Richmond and Windsor line to the Kingston station, it was in competition with the traffic of the London and South Western Railway Company to and from Twickenham station, and was not required for public accommodation; that the said omnibus was started by the complainant to run between the Twickenham and Kingston stations, not for the *bona fide* purpose of providing better or more extended accommodation for the public and passengers travelling upon the said London and South Western Railway to and from the said stations respectively, but for the purpose of annoying the company and Williams, and interfering with the traffic upon the said railway, and of the said omnibus of Williams.

C. J. Cockburn.—I am of opinion that this rule must be made absolute. It appears that the South-Western Railway Company have made an arrangement with Williams, by which they admit his omnibus within the gates of their station at Kingston for the purpose of setting down and taking up passengers, and their luggage, while they refuse admittance to others. The result of this is, that while Williams conveys passengers and luggage to and from Kingston to the door of the booking-offices; another omnibus which brings passengers and luggage from *Teddington, Hampton Wick, Twickenham,* and *other places, is excluded from* coming within the station-yard, and passengers by the latter omnibus *are subject to the inconvenience of being set down in all weathers at* the gates, and having to walk and carry their luggage thence up to the station, a distance of seventy-five feet, and goods

in like manner have to be carried the same distance. I am of opinion that the company, by this arrangement, give an undue and unreasonable preference and advantage to Williams, and are within the provisions of the Act of Parliament; and they give no reason for extending this preference to one omnibus over another. There may be cases, as one can readily understand, where, from want of space, a railway company can only admit within the precincts of their station a limited number of public vehicles to compete for the traffic to and from their railway, but there is nothing of the kind shewn here. It is said that the company by this arrangement secure to the public constant accommodation by omnibus all the year round; but there is nothing shewn from which we can reasonably infer that such accommodation would not be supplied to the public, even as regards Kingston alone, if no such arrangement with Williams had been made; but even assuming that the arrangement is sufficiently convenient for the portion of the public resident at Kingston, *that does not apply to the public who reside at Teddington, Twickenham, and other places.* Looking at all the circumstances of the case, it seems to me that the balance of convenience, as far as the general public is concerned, so far from being in favor of this arrangement, is the other way; and that there is no corresponding benefit shewn to justify this preference. The case, therefore, falls within the terms of the statute, as a case of undue and unreasonable preference and advantage to a particular person, and the rule must be made absolute to the extent of enjoining the company "to admit the omnibus of Marriott into the yard of their station at all reasonable times for the purpose of forwarding, receiving, and delivering traffic upon and from their railway, and in the same manner and to the same extent as other vehicles of a similar description are admitted into the said yard for that purpose." but the rest of the rule, being too vague, must be omitted.

J. CRESSWELL.—I am of the same opinion. It is stated in the affidavits that, from the course pursued by the company in excluding Marriott's omnibus from the station yard, *his passengers have to walk from the gates to the booking office,* and from that I should infer that they are subjected to an undue inconvenience, and good reason is shewn for making the rule absolute.

J. WILLIAMS.—I am of the same opinion, though I should have agreed with Mr. Bovill that we ought not to make this rule absolute if in doing so it were necessary that we should lay down as a general rule that a railway company had no right *under any circumstances* to limit the admittance of public vehicles within the area of their stations for the purpose of taking up or setting down passengers, or receiving or delivering goods. But in this case we decide wholly with reference to the particular station and the circumstances peculiar to that station.

J. CROWDER.—By the course pursued by the company, *Marriott* and *the passengers by his omnibus* are subjected to an *undue and unreasonable inconvenience,* and Williams and the passengers

by his omnibus have an undue preference and advantage given to them. For instance, passengers from Teddington and Hampton Wick by Marriott's omnibus are subjected to the inconvenience of being set down outside the gate of the station-yard, whereas passengers from Kingston by Williams' omnibus are driven into the yard and up to the door of the booking office.

MR. L'SH applied for costs.

C. J. COCKBURN.—We had better adhere to the general practice not to give costs where they are not asked for by the rule, unless there are special circumstances.

Rule absolute, without costs.

JAN. 1, 1859.—BEADELL v. THE EASTERN COUNTIES RAILWAY COMPANY.

(LAW JOURNAL REPORT, VOL. 26, (N.S.) C.P. Page 251.)

Mr. PRENTICE applied under the Railway and Canal Traffic Act, 1854, 17 & 18 vic. c. 31, on behalf of a person named Beadell, a proprietor of Hackney Cabs, for an injunction calling upon the Eastern Counties Railway Company to allow the applicant's cabs to stand for hire in their station at Shoreditch, in the same manner as the cabs of one Clarke, another proprietor, or to prevent Clarke from plying for hire at the station with his cabs. The affidavit filed in support of the application, stated that Beadell was the owner of two hackney cabs, and the defendants had refused to allow him to stand in the station and ply for hire, having granted to Clarke the exclusive right of having his cabs standing at the station, for which he was to pay them £600 a-year. The present case is like one decided in this Court in Hilary term—Marriott *v.* the South Western Railway Company, where an injunction was granted.

J. CRESSWELL.—That case was quite different. The application there was on *public grounds*, because therein was a *public inconvenience*. In that case an omnibus coming up with passengers for the Railway was prevented from taking them up to the station. There was another case, of Barker *v.* the Midland Railway Company (18 *Com. B. Rep.* 46; *S.C.* 25, *Law J. Rep. (N.S.) C.P.* 184.) which is applicable.

J. WILLIAMS.—You have not shewn by affidavit that the arrangement between the Company and Mr. Clarke, is not most advantageous to to the public.

The other judges *(C. J. Cockburn, and J. Willes,)* concurred.

Rule refused.

RANSOME v. EASTERN COUNTIES RAILWAY.

(26, LAW JOURNAL, C. P. 91; 1, C. B. REPORTS, N. S. 437.)

Railway and Canal Traffic Regulation Act.—A Railway Company not allowed to make differential rates, to enable railway-borne to compete with sea-borne coals.—The fair interests of the railway and large quantities and long distances are to be considered in all cases.

This was a rule calling on the defendants to show cause why an injunction should not issue against them to desist from charging the plaintiff for the conveyance of coals on their railway, a greater sum per ton per mile than is charged by them to Messrs. Prior; secondly, to desist from charging the plaintiff more than is charged to those persons with whom the defendants have made private agreements; thirdly, to desist from giving any undue advantage to Messrs. Prior. The facts are fully stated in the judgment.

Mr. BOVILL, Q.C. (with Mr. Sharp) showed cause.

Sergt. BYLES (with Mr. T. JONES) supported the rule.

Jan. 29.—J. CRESSWELL now delivered judgment.—This was a rule calling upon the Eastern Counties Railway Company to show cause why a writ of injunction should not issue against the company, enjoining them to desist from charging the complainant for the conveyance of coals on their railways, called the Eastern Counties, the Eastern Union, and the Newmarket, any greater sum per ton per mile than is charged by the said company to Messrs. Prior; secondly, to desist from charging to the complainant more than to those with whom they have made private agreements; thirdly, to desist from giving any undue preference and advantage to Messrs. Prior. It appears from the affidavits used by the respective parties, that Messrs. Prior had made an agreement with the company to send a large quantity of coal, in three years, from Peterborough to various places on the line, at certain rates to different places. The applicant, who is a coal merchant at Ipswich, sent coal that had been brought to that port by sea to various places upon the same line of railway, and the company charged him a much larger sum per ton per mile, in proportion to the distance over which their coal was carried, than was charged to Messrs. Prior; and it was manifest that the sums charged to Messrs. Prior for the carriage of coal to different places were fixed so as to enable them to compete in the coal trade with Mr. Ransome, who had the advantage of bringing coal by sea to Ipswich. The question we have to determine on this rule depends upon the construction of the 17 & 18 Vict. c. 31, s. 2, by which it was enacted "that no company shall make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or company, or any particular description of traffic, in any respect whatsover, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disad-

vantage in any respect whatsoever." The first thing to be ascertained is the meaning of the expressions "undue or unreasonable preference or advantage," and "undue or unreasonable prejudice or disadvantage." Are those words to be construed with reference to the interests of the parties using the railway only, or may the interest of the railway owners be taken in any manner into consideration? For instance, if 1000 tons could be carried at a lower sum per ton per mile than 100 tons, yielding an equal profit to the railway company, may they so regulate the charge as to derive such equal profit? Would the lower rate charged for the larger quantity give an undue preference? Or, if goods can be carried one hundred miles at a lower rate than ten, and yield an equal rate of profit per ton per mile, may the company charge a lesser rate per ton per mile for those carried one hundred miles, without giving "an undue or unreasonable preference or advantage?" If that may be done without giving what the statute calls "an undue or unreasonable preference," may not the company, in fixing the rates, consider the whole profit, and not the mere profit per mile, and in order to induce people to carry more on their line, and for longer distances, agree to make a reduction in each case? It is true that the sender of the smaller quantity for the shorter distance would pay more per ton per mile; but would that be an "undue or unreasonable prejudice or disadvantage?" Again, if two railways start from the same terminus and arrive at the same terminus by different routes, must they charge for the whole line at the same rate as from intermediate stations to their terminus? For example, there are two lines from Portsmouth to London—the South-Western, by way of Bishopstoke and Winchester, and the South Coast, by way of Brighton—must they charge as much per mile for passengers and goods from Portsmouth to London as from Winchester or Brighton to London, or may they carry at a lower rate the whole distance, in order to compete with each other, without being subject to the charge of imposing on the Winchester or Brighton traffic "an undue or unreasonable prejudice or disadvantage?" After a good deal of consideration, we think that the fair interests of the railway ought to be taken into account; and then the questions above suggested assume a very complicated and difficult character, and are such as we feel but little qualified to decide. Nevertheless, as the Legislature has thought fit to impose on the judges of this court the duty of dealing with such questions, we must do so to the best of our abilities, whenever it becomes necessary. The present case is, in our judgment, free from these difficulties, because the difference between rates charged to Messrs. Prior and Ransome is not founded on such considerations as have been suggested, but manifestly with the intention to enable Messrs. Prior, who deal in coals brought inland from Peterborough to compete with Mr. Ransome, dealing in coals which are sea-borne to Ipswich. No such advantage is due to the former—it is therefore an undue advantage; and with-

out deciding that a railway company may not charge different rates where coals are carried in large or small quantities, and where they are carried for long or short distances, and where the difference made is for the purpose of competing with another line, we think some order must be made to prohibit the continuance of the practice now existing on the railway in question. We cannot say both parties shall be charged the same sum per ton per mile, for Messrs. Prior find their own trucks, and Mr. Ransome uses the trucks of the company; and it is possible it may cost the railway company more to carry over some parts of the line than others. We cannot, therefore, prescribe an equal mileage rate without making some allowance for trucks. And for the same reason, we cannot make absolute the second branch of the rule, and enjoin the company to desist from charging Mr. Ransome any greater sum per ton per mile for the carriage of coal on the railways than they charge the persons with whom they have private agreements, but we think that a writ should issue enjoining them to desist from giving an undue preference to Messrs. Prior, and to carry coal for Mr. Ransome on equal terms with Messrs. Prior, having due regard to the circumstances, if any, which render the cost to the company in carrying for one party less than the cost of carrying for the other; and, as the scale of charges hitherto made for carrying coal for Mr. Ransome manifestly imposed on him "an undue and unreasonable prejudice and disadvantage," the railway company must pay the costs of the application and the rule. There is another case of Harridance: of course the result will be the same. *Rule accordingly.*

OXLADE v. THE NORTH-EASTERN RAILWAY COMPANY.

(26, Law Journal, C. P. 129. Law Times Reports, p. 340.)

Railway and Canal Traffic Act—The desire to introduce a new coal into a district, no ground for preferential rates. Depots trucks, &c. A company is justified in carrying for one person at less rate than for another, if circumstances render the cost to the company of carrying less than for the other.

Sergt. Byles and Mr. Addison were heard for the Railway Company.

Mr. Boville, Q.C., for Mr. Oxlade.

The facts and arguments sufficiently appear from the judgment reciting the master's report.

February 18. — J. Cresswell delivered judgment. — This was a rule obtained by Mr. Oxlade calling upon the North-Eastern Railway Company to show cause why a writ of injunction should not issue against them under the 17 & 18 Vict. c. 31, enjoining them to do various things: first, to carry upon their said railway, for the said William Oxlade, such coal and coke as may be offered to them by the said William Oxlade for that purpose;

secondly, to charge, for the carriage thereof respectively, tolls not higher than the tolls charged by the said company for carrying coal and coke respectively to persons for whom coal, coke, or timber respectively are also carried on the Great Northern Railway, and tolls not higher than the tolls charged by the said company to persons with whom the said company have private agreements for the carriage of coal, coke, or timber; thirdly, to provide for the said William Oxlade depots for depositing and receiving his coal and coke on the stations of the said railway, similar to those provided at such stations for persons with whom they had private agreements for the carriage of coals along the said railway, and similar to those provided at such stations for persons who consign their coal and coke to the said company; fourthly, to afford to the said William Oxlade the same facilities for receiving and forwarding and delivering of his coals and coke upon and from the said railway as the said company afford to persons who consign their coal and coke to the said company; fifthly, to provide for the said William Oxlade waggons, carriages, and trucks for the conveyance and carriage of his coal and coke, and for forwarding the same upon the said railway; sixthly, to afford to the said William Oxlade all reasonable and proper facilities and accommodation for the unloading of his coal and coke at the various stations of the said railway, and to afford to the said William Oxlade at the said stations the same facilities and accommodations for the unloading of his coal and coke as the said company afford to coal-owners and lessees of collieries or any other person. When cause was shown against the rule before the late Lord Chief Justice and three of the puisne judges of this court, it was referred to the master to inquire into four questions, and report thereupon to the court. The questions so referred to the master were, first, whether any and what accommodation and facilities are provided and afforded at any and what stations on the line of the said railway for the unloading of coal and coke, and for what persons and under what circumstances; secondly, whether the company carry coals or coke for persons other than the said William Oxlade on any and what terms different from the terms on which the said company have carried or have offered to carry coals and coke for the said William Oxlade; thirdly, whether there is any and what difference between the circumstances under which the said company have so carried coals and coke for such other persons, and the circumstances under which the said company have carried or have offered to carry coals and coke for the said William Oxlade; and fourthly, whether and in what manner and how the said company are enabled, by reason of such difference of circumstances, so to carry coals and coke for such other person at a cost to the said company less than the cost to the said company of carrying coals and coke for the said William Oxlade. That report was made on the 20th Jan., when my brother Crowder and I were the only judges present; a circumstance

which we very much regret, considering the novelty and difficulty of the matters which we are called upon to decide. Those matters were fully and ably discussed before us by counsel, and we have endeavoured to ascertain what we ought to do in order to give effect to the statute on which the rule was founded. The master's report upon the first question—namely, whether any and what accommodation and facilities are provided or afforded at any and what stations on the line of the said railway for the unloading of coal and coke, and for what persons and under what circumstances,—is as follows:—It appears from the uncontradicted evidence of Mr. Sheriffe, the general manager of traffic, that as far as the public are concerned there is ample accommodation at all the stations for the unloading of coal and coke, and that there are no complaints of a want of supply. There are 124 collieries in Durham and Northumberland, 56 of which send most of the two sorts of coal to the south, and 81 collieries in Yorkshire; and as it would be utterly impossible to find accommodation for so many to send coals, and would lead to no beneficial result, but only produce agitation in the market, and materially interfere with the general traffic of the railway, the plan the company adopt for carrying on the coal and coke trade is this: they asscertain as near as possible the amount of population in the neighbourhood of each station, and calculate the consumption of coal at two tons a-year for each individual, and build cells or depôts accordingly. They then find what kind of coal is most in request at the several stations, and enter into terms with those collieries which furnish the particular coal to supply the requisite quantity. They appoint a depôt agent, whose duty it is to manage the sale of coals, and when ever a particular coal is getting low he sends an order to the general agent at Darlington, who sends up the required number of wagons to the particular colliery, where they are filled and returned in due course. By these means the depôt agent knows when he may expect the waggons, and makes arrangements for their immediate unloading, by which means all confusion is avoided, and interference with or risk to the general public prevented. This is a universal rule, and though instances have occurred in which parties have departed from it, the practice has always been stopped when it has been discovered. Mr. Sheriffe says, "the order must go through the depôt agents. I apprehend this is a principle which cannot be departed from without injuring the traffic of the line, and hazarding the public safety." And, as a proof of the utility of the rule, he mentions the case where Mr. Oxlade, as agent for the West Belmont Colliery, got more coals sent to the Sligsby station than the station-master who attended there as the depôt agent had ordered, and it had to be unloaded on the main line, Mr. Sheriffe goes on to say, "the matter was reported to me and I stopped the practice; I could not have continued the responsibility for all the coals in Durham. The traffic could not have been carried on without restriction." The incidents of this station convinced the directors that the only way

of doing business was through depôt agents. It was proved, however, that most of the Yorkshire coalowners employ their own agents. This was the practice before amalgamation of the three companies in 1854, and they have continued it; and Mr. Sheriffe says that, though it does interfere in some degree with the traffic, yet, as all other coal comes to York, and the station there is large and at head-quarters, and under the immediate eye of the manager, all hazard to the public is prevented. Mr. Sheriffe says, "We do not know private coal-merchants: we have only carried coals for Mr. Oxlade, as the agent for the West Belmont Colliery or some other colliery. We only trade with coal-owners and their agents." He was asked if they had not appropriated some cells at York to private coal-merchants? He says, "We have not appropriated any cells to private coal-merchants: they are sold to the public by the depot agents: the public are satisfied; all coal-merchants are treated as the public, and may get what coals they please by sending a proper order. The agent acts for the collieries. He simply seeks whatever coal is asked for. It makes no difference to the railway company; he renders an account to the colliery owners." He was also asked if one or two private individnals had not occasionally had a waggon down unknown to the agent. He says he has no doubt it has been done; but it is in every case an exception to the rule, and is stopped if discovered. He then goes into some further particulars about places, which I need not read. It is summed up by the master: "in fact there appears to be one principle throughout by which the company are governed, namely to provide an ample supply of coals for the public, and to prevent by their rules any obstruction of the general traffic of the railway." This being the principle by which the company have been governed, we do not find that, by the regulations made for carrying it into effect, and which are fully detailed in the master's report, any undue or unreasonable prejudice or advantage has been given to, or in favour of, any particular person or company, nor has any person or company, or any particular description of traffic, been subjected to any undue or unreasonable prejudice or disadvantage. This disposes of the fourth and last branch of Mr. Oxlade's rule, namely, those which call upon the company to afford to the said William Oxlade the same facilities for receiving and forwarding and delivery of his coals and coke upon and from the said railway, as the company afford to persons who consign their coal and coke to the said railway, and to afford to the said William Oxlade all reasonable and proper facilities and accommodation for the unloading of his coals and coke at the various stations of the said company, and to afford to the said William Oxlade at the said stations the same facilities and accommodation for the unloading of his coal and coke as the said company afford to the collieries and owners or lessees of collieries, or to any other person. The master then states the circumstances relating to the carriage of coals by the North Eastern Company;

and we think that it is made out that such circumstances enable the company to carry such coals at a cost to them less than the cost of carrying coals and coke for Mr. Oxlade; and that does not show that by carrying them at a low rate, any undue or unreasonable preference is given, or any undue or unreasonable disadvantage imposed. This disposes of so much of the second branch of the rule as relates to carrying coals for persons for whom the same are also carried on the Great Northern Railway. The master then proceeded to report upon the other part of that branch of the rule, namely, the charge made by the company for coals carried for persons with whom they have private agreements for the carriage of coals and coke. It appears that a desire to introduce the Northern coal into Staffordshire induced the company to make three special agreements with different parties for the carriage of coal and coke at a rate lower than their ordinary charge We think that the desire to introduce the Northern coal into Staffordshire was not a legitimate ground for making such agreements, and the lowering their rates for that purpose was giving an undue preference to that traffic. Other special circumstances are stated in the agreements, which, had they affected the pecuniary interests of the company, might have furnished ground for contending that the preference was undue or unreasonable; but the master has not found or stated that there was before him any evidence to show that the pecuniary interests of the company were affected. Upon this state of facts we are of opinion that such agreements could not be made after the passing of the 17 & 18 Vict. c. 31, without violating its provisions. Two out of the three agreements were made after the Act passed, one of them before; but all have now expired. It would, therefore, be futile to enjoin the company to charge Mr. Oxlade, for carrying coals, tolls not higher than those charged to persons with whom they had private agreements. But we think that acting upon the same view of the statute as we expressed in the case of *Ransome* v. *The Eastern Counties Railway*, we ought to enjoin the railway company not to charge Mr. Oxlade for the carriage of coals at a higher rate than they charge other persons, having a due regard to the circumstances, if any, which render the cost to the company of carrying for one party less than the cost of carrying for the other. The master was not directed to inquire into the fifth branch of Mr. Oxlade's rule, namely, his demand to have waggons and trucks provided by the company for the carriage of his coal and coke. When the matter was referred to the master, it appeared to the court that Mr. Oxlade having refused to pay the carriage charged to him at the same rate as to all others under similar circumstances, had no right to ask the company to find trucks, and we continue of that opinion; nor is there any just ground of complaint because the company will not carry his coals to Alltofts for the purpose of being there shifted into other trucks. They have no convenience for the purpose, and do not give such facility to any other person. The first branch of the rule remains

to be dealt with, namely, that which calls upon the court to enjoin the company to carry upon their said railway, for the said William Oxlade, all such coal and coke as may be tendered to them by the said William Oxlade for that purpose. When the rule was first before the court, it was considered that Mr. Oxlade had no right to call upon the company to carry all coal and coke that he might tender for the purpose; and since then, an opinion has been expressed by the Court of Exchequer, in an action between these very parties, that the company are not common carriers of coal; thus confirming our view of the claim in question. Upon the whole, then, we are of opinion that, as to all the matters in the rule except the latter part of the second branch, which relates to the special agreements, it must be discharged; but that as to the special agreements, the injunction must issue, as above suggested. Had Mr. Oxlade confined his demand to that matter, the company might possibly have complied with it; but he has asked a great deal more than he is entitled to. We think, therefore, that we ought not to give him the costs of the application. On the other hand, the company have been partially in the wrong, and therefore must bear their own costs.

Rule absolute upon the latter part the second branch of the rule.

Rule discharged as to the rest.

February 25, 1858—IN RE RANSOME v. THE EASTERN COUNTIES RAILWAY COMPANY.

(27 Law Journal Reports, C.P. 137.)

Scale of charges must not be so framed as regards distance as to diminish the natural advantages which one dealer has over another, by reason of local proximity.—Division of traffic districts must not be for purpose of undue preference.

A railway company adjusted certain districts, within which, they carried coals at reduced rates, for quantities not less than a train load, 200 tons. Those districts were so adjusted, that the places where the complainants (coal-dealers at J.) dealt, instead of being put into one district, were distributed into three, so that it was necessary for them, in order to take advantage of the reduced rates, to send three train loads from J. into each district, which was more than their traffic demanded; whereas for dealers sending coals from P., a single district was constituted, comprising, besides other places, those at which the complainants dealt, and so afforded a traffic requiring coals enough to enable the P. dealers to take advantage of the lower rates. This court refused to interfere under the 17 and 18 Vict. c. 31., s. 2., it not being shewn that the complainants were unduly subjected to this disadvantage, or that it was caused by undue preference; the adjustment of

districts not being disadvantageous to the public at large, or objectionable in other respects.

The company made a scale of charges for the carriage of coals from P. and from J. to places on their line, at which the complainants dealt, the effect of which was to diminish the natural advantage which the position of the dealers at J., by reason of its greater proximity to those places, gave them over to the dealers at P., by anhililating in point of expensive carriage, a portion of distance between P. and those places;—Held that an undue preference was thereby given to the dealers at P.

J. WILLIAMS delivered judgment in this case as follows:—This rule calls upon defendants to shew cause why an injunction should not issue enjoining them to desist from giving undue preference in respect of the carriage of coals to dealers sending them from Peterborough to places on the railway at which complainants deal in coal, and from subjecting them to any undue prejudice in respect of the carriage of coal from Ipswich to those places, and enjoining the company to carry coals for the complainants on equal terms with dealers sending coals from Peterborough, and having due regard to circumstances (if any) which would render the cost of carrying for one party greater than the cost of carrying for the other. The complainants charge the company with having contrived a scale of charges for the carriage of coals on their railway, with a view to give the traders in land-borne coals brought along it from Peterboro', an undue advantage over the sea-borne coal, brought along it from Ipswich. On the argument, before my brothers Crowder, and Willes, and myself, the complaint was rested by the counsel for the applicants mainly on two grounds contained in the affidavits. The first was, that the company, since the first of May, 1857, had established a system of carrying coals according to assigned districts, comprising certain places on their lines and their various branches, and within these several districts, the company carry coals at certain low rates for quantities not less than what is called a train load *i.e.* 200 tons, or 35 trucks. The complainants were coal-dealers at Ipswich, also carrying on that business at Needham-market, Stow-market, Elmswell, Thurston and Bury, which are places on the branch of the company's lines which conduct to Peterboro', and also at Mellis and Diss, which are on another branch line communicating with that first mentioned; and also at Hadleigh, which is on another district branch. These districts, the complainants assert, have been so adjusted that the places where they deal, instead of being put into one district, are distributed into three, so that, in order to take advantage of the reduced rates, it is necessary to send from Ipswich three train loads, one into each district, which is a greater quantity than their traffic demands. They say, therefore, that it is thus rendered impossible for them to avail themselves of the lower rates; whereas the districts are so arranged, that for dealers sending coals from Peterboro', instead of from Ipswich, a single district is constituted, which comprises, besides other places, seven

of those at which the complainants deal, and so affords a traffic requiring such a quantity of coals as enables the Peterboro' dealers to take advantage of the lower rates. On the part of the company a greater part of these suggestions is denied by affidavits; and particularly it is sworn by Mr. Mosely, the traffic manager, that the company would make no profit at all if they were to carry a less quantity than a train load in a separate train at the lower rates; and that as to the adjustment of the districts, they were fixed and assigned by himself, having regard to the quantity of coals carried along the lines, and the places to and from which they are carried, and the consumption of coal which would be required for the use of the population of the places comprised in the districts; and he goes on to deny positively that they were fixed or adjusted in order to give any undue preference to the land-borne coal-traders, or work any prejudice to the sea-borne; and it is also sworn that the three districts into which the places where the complainants deal are distributed, comprise also other places, containing a large population. On the whole, therefore, we think that ground of complaint has not been sustained; for although we think the company have failed to shew that the district system, arranged as it now stands, is not disadvantageous to the complainants, yet, looking at the affidavits on both sides, we cannot find sufficient to justify us in coming to the conclusion, that the complainants are unduly subjected to this disadvantage, or that it is caused by any undue preference or partiality, as suggested. It is their misfortune which we cannot remedy, if the state of their trade is such, that it happens not to accommodate itself to a scale and system of rates which does not appear to be disadvantageous to the public at large, or objectionable in other respects.

The second ground of complaint is, that the company charge rates for carrying coals from Ipswich to the places where the complainants deal, which, it is alleged, are out of all proportion greater than the rates charged for carrying coals from Peterboro' to those places, inasmuch as the company charge for carrying a train load from Ipswich to Bury which is only 27 miles, the sum of 2s 5d, and from Peterboro' to the same place, which is seventy four miles, the sum of 4s 3d; from Ipswich to Thurston, which is 23 miles, the sum of 2s 2d, and from Peterboro' to the same place, which is 78 miles, the sum of 4s 4d; from Ipswich to Elmswell, which is 18 miles, the sum of 1s 10d, and from Peterboro' to the same place, which is 83 miles, the sum of 4s 5d; from Ipswich to Diss, which is 27 miles, the sum of 2s 5d, and from Peterboro' to the same place, which is 98 miles, the sum of 4s 6d; from Ipswich to Mellis which is 23 miles, the sum of 2s 2d, and from Peterboro' to the same place which is 95 miles, the sum of 4s 6d; and a similar disproportion, between the distances over which the coals are carried, and the prices charged for carrying them, is shewn as to the other places where the complainants deal. In answer to this, it is sworn, on the part of the company,

that there are circumstances which render the cost of the company per ton per mile of carrying coal from Peterboro' to the places where the complainants deal less than the cost of carrying coal from Ipswich, so as to justify the difference of charge, because the cost of carrying coal for long distances is proportionably less than the cost of carrying it for short distances.

It is further sworn that, on analysis of the comparative cost of carrying for various distances, ranging from 10 to 90 miles, and of the rates charged by the company for those distances, and a comparison of those results, it appears that the charge made by the company for carrying coals from Peterboro' to the places where the complainants deal, are greater in proportion to the cost of carrying than the charges made by the company for carrying coals from Ipswich to those places, and, consequently, that the profit of the company is greater with respect to the former than the latter.

It is also sworn that the adjustment of districts, and the scale of rates for the carriage of coals are not confined to Peterboro' and Ipswich, but extend on precisely the same footing to other places on the company's lines, viz. the ports of Wisbeach, Lynn, Yarmouth, Lowstoft, Harwich, and Colchester. But there is a portion of the scale of rates as to which, we think, no satisfactory explanation has been given by the company. The scale of train loads of coal in the owners' waggons begins to increase at the distance of 14 miles; from thence, up to the point of 20 miles, it increases at the rate of 1d. per ton per mile; it then goes on increasing (with some exceptions) at the rate of 1d. for every two miles till it reaches the point of 60 miles; then it increases at the rate of 1d. for three additional miles, and then at the rate of 1d. for four additional miles, till it reaches the point of 75 miles; then it increases only 1d. for six additional miles, till it reaches the point of 81 miles; and then it increases only 1d. for the additional distance of 12 miles, till it reaches the point of 93 miles; and then it increases only 1d. for the additional distance of six miles, till it reaches the point of 100 miles. The scale then reverts to the earlier rates of increasing at the rate of 1d. for every two miles, and continues invariable at that rate of increase, till it reaches the maximum distance, viz., 137 miles. It is, therefore, obvious that on this scale the charge is the same to the Peterborough dealers, whether they send their coals in the direction of the places where the complainants deal, 76 or 81 miles, and whether they send them 82 or 93 miles, and whether they send them 95 or 100 miles. In effect, as far as regards the cost of carriage, the distance from Peterborough is abridged in these instances to the extent of 5, 11, and 5 miles respectively, and the Peterborough dealers are only charged 2d. per ton for the journey of 24 miles, which intervenes between the point of 76 miles distance from Peterborough and the point of 100 miles distance from it; and it will be found that between these points lie all the places (except Bury and Hadleigh) where the complainants deal

and where the land-borne coal is alleged to be brought into competition with the sea-borne; and thus the carriage from Peterborough to Stow-market and Needham-market (two of the places where the complainants deal), which are distant respectively, 88 and 92 miles from Peterborough, is charged the same as if they were distant only 82 miles; and the distance from Bury to Diss, including in its course Thurston, Elmswell, and Mellis, and amounting to 24 miles, only increases the charge to the Peterborough dealers by 3d.; but as soon as the distance reaches 100 miles, that is, as soon as the places, where the competition exists are passed, the scale resumes the increasing ratio of 1d. for every two miles. This anomalous part of the scale is not accounted for by the company, as far as we can discover. It is true that it pervades all the districts, and is applied to Lynn and Yarmouth, and all the other ports on the company's lines, and it is not peculiar to that portion of them which conducts from Peterborough to Ipswich. If it had been so, the pressure on the complainants would have been so transparent that it would have been a palpable evasion of the injunction already obtained in this court, by the same complainants, against the company. In *Re Ransome v. The Eastern Counties Railway Company* (1) 1 Com. B. Rep. N. S. 437; S. C. 26 Law. I. Rep. (N.S.) C.P. 91. New Series, xxvii. C.P. Ante. But the question remains, whether the rate, even thus guarded, must not necessarily be deemed, when closely considered, as in reality a disguised infringement of the principles on which the judgment of this court on that occasion was founded. The effect of such a scale of charges is to diminish the natural advantages which the position of the dealers at Ipswich, by reason of its greater proximity, gives them over the dealers at Peterborough, in respect of the traffic at Thurston, Elmswell, Stow-market, Needham-market, Mellis, and Diss, by annihilating, in point of expense of carriage, a certain portion of the distance between Peterborough and those places; and just in proportion by which that natural advantage is diminished, an undue preference is given to the Peterborough dealers, and an undue disadvantage is brought upon the complainants and the other Ipswich dealers. We are therefore of opinion that a writ must issue, enjoining the company to desist from giving an undue preference, in respect of the carriage of coals, to persons sending coals from Peterborough or other places, to or towards the places mentioned in the rule; and we think the company ought to pay the costs of this application.

Rule accordingly.

THE RUABON COAL CASE.

26th and 28th MAY, 1858.—NICHOLSON *v.* THE GREAT WESTERN RAILWAY COMPANY.

A guarantee of large quantities in full train loads yearly, is fair ground for differential rates. If a scale of rates, and a division of districts be artfully framed for purposes of undue preference the court will give relief; so also the court will enquire into the relative fairness in amount of differential rates caused by a guarantee of large quantities, and that they bear just proportion to other rates.

The Attorney-General (Sir Fitzroy Kelly, Q.C.), Mr. Montague Smith, Q.C., and Mr. Grey for the Railway Company. Mr. Bovill, Q.C., Mr. Manisty, Q.C., and Mr. Dowdeswell were heard for the complainants. The facts sufficiently appear in the judgment.

Mr. Justice CROWDER delivered the judgment of the court on November 9th, 1858:—

"This was an application by Messrs. Nicholson, coal owners in the Forest of Dean, for an injunction to restrain the Great Western Railway Company from giving an undue preference to the coal traffic of the Ruabon Coal Company upon their line, as against the coal traffic of the coal owners of the Forest of Dean; and several grounds of complaint are set forth in the affidavits upon which the rule was obtained. Affidavits having been filed on the other side, and also affidavits in reply by the complainants, the matter was referred to the master, to report upon certain points settled by my brother Williams.

"The case was argued before my brother Willes and myself. We think the master's report disposes of all the alleged grounds of undue preference, except those arising out of the special agreement. The main ground of complaint is, that the Great Western Railway Company did, on the 31st of January, 1856, enter into an agreement with the Ruabon Coal Company, by which numerous advantages, all reduceable to a money value, were secured to the coal traffic of the Ruabon Coal Company on the line of the Great Western Railway as against the coal owners of the Forest of Dean, and greatly to the prejudice of their trade in coals conveyed on that line. The complainants, in their affidavits, rely much upon the history of the Ruabon Coal Company, shewing its formation by two or three persons, who were intimately connected with the Great Western Railway Company, and who held 500 out of 574 shares in the Ruabon Coal Company; and the complainants charge the Railway Company with entering into stipulations in the special agreement calculated to promote the interests of the coal company without regard to the interest of the railway company, and they further allege that this agreement was kept secret from the complainants. They set forth in the affidavit various advantages secured to the coal company by the agreement in connection with

the conveyance of coals along the Great Western Railway, all of which, as is admitted on both sides, are capable of pecuniary valuation, and therefore in effect, diminish the rate of carriage of coals to the Ruabon Coal Company, and thus give them an advantageous position in the market.

"The affidavits in answer positively deny any community of interest on the part of the railway company with the coal traffic of the Ruabon Coal Company, or that the railway company has any interest in the success or failure of the coal company, except as regards the freight on the conveyance of the coals, and allege in unqualified terms that the only object of the railway company in promoting the coal traffic from the Ruabon collieries has been to benefit their own proprietors, by means of a railway profit derivable from such traffic.

"It is also positively denied that there was any secrecy intended in the special agreement, and it is alleged that an offer of a similar agreement was made to all the consigners of coal on the Great Western line.

"The agreement is set out at full length, and it thereby appears that the considerations moving the Great Western Railway Company to allow the various advantages complained of, was the engagement by the Ruabon Coal Company, to send for ten years along the Great Western line of railway, beyond the distance of 100 miles, such a sufficient quantity of coal during each year, as would produce to the company for freight, terminals, waggon hire, and break of gauge, a yearly revenue of £40,000 in fully loaded coal trains, at the rate of seven per week. On a careful review of the affidavits on both sides, we think it sufficiently appears that the Great Western Railway, on entering into such agreement, had only the interests of the proprietors in view, and the legitimate increase of the profits of the railway. It has been said by the court, in *Re* Ransome, 1st Common Bench Reports, new series 452, 'That in considering the question of undue preference, the fair interests of the railway ought to be taken into account.' In that case the decision was against the railway company, only because it appeared to be the manifest object of the railway company, in charging different rates, to enable one set of coal owners to compete with another. And in *Re* Oxlade the decision was also against the railway company, because the lowering the rates appeared to be solely from a desire 'to introduce Northern coke in Staffordshire.' When the statute speaks of 'undue or unreasonable preference or advantage,' and 'undue and unreasonable prejudice or disadvantage,' it uses language implying that there may be advantage to one person, or one class of traffic, and prejudice to another, which would not be within the Act of Parliament. The preference and prejudice must be 'undue' or 'unreasonable' to be within the statute. And although in the case now before the court, it is quite manifest that the Ruabon Coal Company have many and important advantages in carrying their coal on the Great Western Railway, as against the complainants and other

coal owners in the Forest of Dean, still the question remains, are they 'undue' or 'unreasonable' advantages? This mainly depends upon the adequacy of the consideration given in return to the railway company for the advantages afforded to the Ruabon Coal Company. The affidavits on the part of the railway company assert that, regard being had to the large quantity sent by the Ruabon Coal Company, the distance of passage over the line, and the regular full coal trains made up for its conveyance, there is a greater remuneration to the railway company per ton per mile, for such carriage, at the lower rate and with the advantages afforded, than for carrying the complainants' coals at the higher rate. Mr. Saunders, the Secretary of the Great Western Railway Company, referred to an interview between the directors of the railway company and the representatives of the coal traders of the Forest of Dean, and in the thirty-fifth paragraph of his affidavit, states 'that the only substantial point of difference between the traders and the railway company is this, that the company proposed and insist upon a scale graduated under a contract, in respect of quantities and distance, and for full loads, whilst some of the traders insist upon a scale graduated according to distance only, without contract for quantity and corresponding in point of mileage only according to distance, with the charge made to the Ruabon Coal Company for a corresponding distance, however small the quantity carried, and under whatever different circumstances, as to loads, or otherwise, it may be supplied for conveyance; and that this is a principle which is not and cannot be recognised or admitted by railway companies, without serious loss and prejudice to their interests; that the guarantee of a large traffic enables them to work such traffic with greater economy, by the arrangement of trains and times, and by a special organisation of service, and constant use of plant adapted to such traffic; and that there is a better remuneration or profit to the railway company per ton, from a large, regular, and constant traffic carried at a less rate, than from a small, irregular, and intermittent traffic carried at a higher rate.' The only answer given to this paragraph by the affidavit of the complainants, in reply, is in paragraph fourteen. 'We say that our trade and the trade in coal from Bullo and Lydney, is not small, irregular, and intermittent, but large, regular, and constant, and to the best of our belief exceeds in quantity the coals sent by the Ruabon Coal Company.'

"Again, Mr. Saunders, in the twenty-ninth paragraph of his affidavit, refers to the several instances of preference alleged by the complainants to be given to the Ruabon Coal Company in the thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth and thirty-ninth paragraphs of their affidavit, and says:—'That according to the difference of circumstances, the charges are fairly proportionate; that the mere question of distance affords no certain criterion as to the reasonableness of the relative charges; that for distances under fifty miles the ordinary rates are charged to

the Ruabon Coal Company; and that for distances less than 100 miles higher rates in proportion are charged to them than for distances exceeding 100 miles; and that this is a well-known and usual principle of charge adopted by RAILWAY COMPANIES.' The table of rates is then referred to, and the twenty-ninth paragraph concludes thus:—That, having regard to the fact that there is in these cases no special contract for a considerable quantity to be sent annually and regularly, or for the loading of full train loads, as in the case with the Ruabon Coal Company, the rates so charged are in every respect fair and reasonable, as compared with the rates charged under the special cirumstances aforesaid, to the Ruabon Coal Company. The whole of this paragraph is left entirely unnoticed by the affidavit of the complainants in reply. Had the complainants disputed this alleged 'well known and usual principle of charge;' or had they, by their affidavit, called in question the allegation in this paragraph, that the rates charged without agreement are fair and reasonable, *as compared* with the lower rates charged under the special agreement with the Ruabon Coal Company, regard being had to the different rate of cost of carriage to the Railway Company, the court would have felt bound to submit these matters to a detailed investigation by an engineer, or traffic manager of a Railway, who would be able by calculations to arrive at a satisfactory result upon the principle recognised by Railway Companies of obtaining the greatest quantity of work from an engine of the least expense.

"Mr. Saunders, in paragraph nineteen of his affidavit, while admitting the existence of the special agreement with the Ruabon Coal Company, says, 'that the circumstances justify such lower charge per mile, and that, under like circumstances and subject to like conditions, the Great Western Railway Company are willing and have offered to make the same reduced charge per mile to all other coal proprietors.' The complainants in their first affidavit, paragraph forty-four, and in the affidavit in reply, say that it is impossible for them to enter into an agreement with stipulations like those contained in the special agreement with the Ruabon Coal Company. Why it is impossible they do not say. But in the course of the argument, great stress was laid by their counsel upon the fact that there are several places within the distance of 100 miles from Bullo and Lydney, on the Great Western Railway, to which the complainants send their coals, and that the Ruabon collieries are at a greater distance than 100 miles from any of the places on the line to which they send their coals; and that, consequently, it was impossible for the complainants to stipulate for the sending of coals so as to take advantage of the diminished rate above the distance of 100 miles. It was strongly urged before us, that the reason for fixing upon the distance of 100 miles was because the railway company knew that the principal traffic of the Forest of Dean was not to London, which is beyond the 100 miles, but to the intermediate stations within that distance. But it is to be remarked that no sentence of the complainants' affidavits is

directed to that point, nor is there to be found in them an allegation that any large portion of their traffic lies within the 100 miles. The learned counsel for the complainants relied on the thirtieth paragraph of Mr. Saunders's affidavit, from which certainly an inference to that effect may be drawn.

"The existence, however, of such a fact would only be material as tending to show that the special agreement made with the Ruabon Company, and offered to all consignors of coal, was only a cloak for concealing undue favour and partiality to the Ruabon Coal Company in their coal traffic.

"Had the complainants intended to rely upon this point, they ought to have specifically referred to it in their affidavits, in order that an opportunity for explanation might have been afforded to the Great Western Railway Company.

"If we could see clearly that a scale of rates with reference to distance had been framed with the view and having the effect of favouring the Ruabon coal traffic and prejudicing the Forest of Dean coal traffic, we should hold it to be an undue preference within the act, in accordance with the decision of Ransome *v.* the Eastern Counties Railway Company, reported in the *Jurist* of the 10th April, 1858. But we have no sufficient evidence to lead us to such a conclusion; and, although, the complainants may suffer by this scale of rates, in consequence of their local position, that is a matter which the court cannot interpose to remedy.

"It was also contended by the learned counsel for the complainants, that it was impossible for them to accept the agreement in the terms offered, because they were unable to guarantee so large a traffic as would yield £40,000 freight annually.

Now, according to the construction we put upon the statute 17th and 18th, Vict. c. 31., is not contravened by a railway company carrying at a lower rate, in consideration of a guarantee of large quantities and full train loads at regular periods, provided the real object of the railway company be to obtain thereby a greater remunerative profit by the diminished cost of carriage, although the effect may be to exclude from the lower rate, those persons who cannot give such a guarantee.

"The result is, that this rule must be discharged with costs."

In the above case the following scale of rates for coals, had been circulated by the company, and offered to the complainants and others. It was referred to in the master's report:—

STATEMENT OF TOTAL CHARGES PER TON FOR COALS OVER THE GREAT WESTERN LINES REFERRED TO IN THE FOREGOING REPORT.

	Per Ton per Mile.	
	Freight.	Use of Wags.
Contract charge in full train loads for distances exceeding 100 miles. Total freight £5,000 and upwards per annum for a term.....	7–16ths of a penny	1–16th of a penny
Retail charge in single trucks, for distances exceeding 50 miles, without any engagement for quantity or time	8–16ths of a penny	2–16ths of a penny

	Contract Charge—Freight exceeding per annum :—						Retail charge for small quants
	£ 40000	£ 30000	£ 20000	£ 15000	£ 10000	£ 5000	
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Additional charge in each case for terminals and other expenses	0 3	0 6	0 9	1 0	1 3	1 6	1 6
Thus the total charge including freight, wagon hire, and other expenses for :—							
Somersetshire Coal—distance 124 miles from Radstock to Paddington	5 5	5 8	5 11	6 2	6 5	6 8	8 0
Forest of Dean Coal — distance 128 miles from Bullo Pit to Paddington	5 7	5 10	6 1	6 4	6 7	6 10	8 2
[This may be varied to some extent by South Wales Railway charge over their line.]							
North Wales Coal—distance 198 miles from Ruabon to Paddington	8 6	8 9	9 0	9 3	9 6	9 9	11 10

W. L. NEWCOMBE, Traffic Manager.

HARRIS AND OTHERS v. COCKERMOUTH & WORKINGTON RAILWAY COMPANY.

(LAW TIMES REPORTS, VOL. 30, 273; AND 27 LAW JOURNAL, C. P. 162.)

Railway company—Undue preference.—A railway company cannot, in order to induce persons to send goods by their railway instead of sending them by some other means which would cost such persons less than the sum they would have to pay the company but for the reduction, carry goods for those persons at a lower rate than they charge others over the same part of the line.

Lord Lonsdale was about to make a railway from some coalpits let to the Messrs. Fletcher, but abandoned his intention upon the defendants entering into an agreement that they would carry the coal of the Messrs. Fletcher, his tenants, at a sum less than they charge the complainants for carrying coal from the same station:

Held, that to charge a lower rate under such circumstances was an undue preference.

This was a rule calling on the defendants not to give undue preference to the Messrs. Fletcher. The complainants as well as the Messrs. Fletcher work collieries and send their coals by the defendants' railway. It appeared by the affidavits that the defendants charged the Messrs. Fletcher less per load than they charged the complainants, and that the real reason for the difference was, that Lord Lonsdale, whose tenants the Messrs. Fletcher are, had threatened to make another railway for his own tenants, by which they could carry their coals to the place of shipment without going upon the line of the defendants, and was actually about to make it, but for the agreement by which the railway company consented to carry the coals of Lord Lonsdale's tenants at a lower charge. It appeared also that all the land between the pits and the place of shipment either belonged to Lord Lonsdale or was in lease to him, and that before the railway was made Lord Lonsdale's pits were more conveniently situated for the purposes of carriage to the port than the other pits.

Mr. MANISTY, Q.C. showed cause.—The Fletcher's may send their coal without putting them on the rail at all, and it is an important question whether, in that case, the railway company, acting *bond fide* and for the interest of the public and themselves, carrying their coal for less than they charge other parties, cannot do so. If the company are not allowed to do so, they will lose about £3,000 per annum. Lord Lonsdale, whose tenants the Fletcher's are, said that if we did not enter into the agreement we did, he would make another line and carry their coals himself, which would in its result injure the complainants, by making it necessary for the company to raise its tolls. Lord Lonsdale is the owner of all the land between the pits and the place of shipment, except

one field, of which he has obtained a long lease, and it will not, therefore, be necessary for him to go to Parliament to enable him to make the line. Cannot the company say, "We will carry your coals for a less price, so as to induce you not to make the railway proposed?" Lord Lonsdale was actually about to make the railway, and would have made it but for this agreement. [C. J. COCKBURN. — The foundation of your argument is that Lord Lonsdale can make the railway without going to Parliament, and your affidavits must show that he can.] We say generally that he can. [T. JONES: Our affidavits in reply show that there are public roads to cross, and that would make an Act of Parliament necessary.] Those affidavits are not yet filed. If they use them we must be allowed to meet them by others. [C. J. COCKBURN: Then you had better now argue it on the assumption that Lord Lonsdale can make it.] The affidavits show that before the railway was made there were greater facilities for the carriage of Lord Lonsdale's coal, and that he had a decided advantage over the pits of the complainants. *Ransome's* case, 1 C. B., N. S., 451, construes the words "undue preference." The judgment there states, that "the fair interest of the railway is to be taken into account." But apart from the intended railway, the company has a right to charge Lord Lonsdale less on account of the original position in which he was. He then had natural advantages, and those ought to be continued. The ground is, that the Fletcher's carry a greater quantity, and are bound to send certain quantities at certain times, and we have laid down the rule that we will carry for all collieries at a less price in such cases.

C. J. COCKBURN: Mr Hill, we think we need not trouble you. I think this rule must be made absolute. The facts seem to have been clear. The complainant, Mr. Harris, is the proprietor of certain collieries, and Messrs. Fletcher being tenants of the Earl of Lonsdale, are the occupiers of certain other collieries, all of which communicate with, by one means or another, and convey their coals along the line of the defendants, to the terminus at Workington. And it is admitted that the company have charged a higher rate for the conveyance of the coals from the collieries of the complainants than they do for the conveyance of coals which are brought from the collieries of the tenants of Lord Lonsdale. Now, *primâ facie* that would show a case of undue preference. The question is, whether the company have shown any sufficient grounds for the difference which they make in the charge imposed upon the collieries of the complainants as compared with those of the Messrs. Fletcher. Then, three grounds are put forward—one, as I understand it, that the latter collieries are at a greater distance than the others. I think that altogether fails. In point of fact nothing is shown from which it can be at all made out that the excess of charge in the one case, as compared with the other, bears any proportion whatever to any difference in point of distance. Well, then it is said that Lord Lonsdale has been induced to desist from conveying his coals by the ordinary road, and

has been led to convey them to the railway in order that they may be carried upon the railway, and has been further induced to make certain works for the purpose of conveying his coal to the railway, and by an agreement with the company that if he did that his coals should be carried at a cheaper rate than the coals of the adjoining collieries; and, further, it is said, as a ground for the difference in point of charge, that Lord Lonsdale had threatened the company with the construction of another railway, upon which his coals might be carried, if they did not consent to carry his coals at a lower rate. Now, I have already said I think the first ground altogether fails in point of fact; and with regard to these two grounds, I do not think that in point of law they constitute any justification of the course the company has pursued in making this difference. I quite agree that this court has intimated, if not absolutely decided, that a company is entitled to take into consideration any circumstances, either of a general or of a local and peculiar character, in considering the rate of charge which they will impose upon any particular traffic; as for instance, if a company were to lay down a rule that if a certain quantity of goods were brought to be conveyed, they would charge less upon that certain quantity than they would upon a less quantity, regard being had to the cost of working the particular line. That would be a very fair ground upon which a company might justify the making a distinction between the two cases of one man sending a ton of goods at a time, and the other who sent one cwt. or less. So, also, if the company make a distinction between terminal traffic and intermediate traffic, where there may be very fair and sufficient reasons, as, for instance, in respect of terminal traffic, there may be competition with another railway; and with reference to terminal traffic, as distinguished from intermediate traffic, it may be that, there being so much more, they can afford to carry the goods over the whole line cheaper, or proportionably so, than they can over an intermediate part of the line. But those are all cases in which the general public is treated with perfect equality; although, where individual members of the public happen to be travelling between one place and another, there may be something in the reasons to which I have referred that would import what would be an apparent, but which in point of fact is not a real, injustice. But that is a very different thing from the present case. Here, these are collieries situate in the same locality, and a distinction is made between them upon these grounds, that Lord Lonsdale or his tenants, would otherwise send their coals by some other conveyance, either by the ordinary mode, or by some railway which Lord Lonsdale would be induced to construct, if the company would not give him this advantage over others who are competing with him in the sale of coals. In my opinion that is not a sufficient ground. Whatever rule the company lay down, it ought to be a rule applicable to all persons similarly circumstanced. I do not think that

this is such a rule. It is plain that, if we were to take into consideration the circumstances upon which Mr. Manisty relied, there is no case in which we should not be called on to enter into a consideration of the various circumstances which may influence one person, as distinguished from another, in sending his goods by a particular railway. Every man might make his own bargain with the railway; circumstances differ in every individual case, and it might always be a question of how far the company would be justified in making particular bargains. I do not think it was the intention of the Legislature, or its policy, that when once these railways were constituted there should be an advantage to one person as distinguished from another, and a corresponding disadvantage. I think the safe rule to go upon is this: the intention of the Legislature was to give equal advantages, so far as the rate of charge is concerned, to all individuals similarly circumstanced; and that a railway company, although they have a right to lay down certain rules in reference to particular circumstances, so long as they act *bona fide* with regard to their own interests and the interests of the public, cannot make particular bargains with particular individuals, whereby one person is benefitted and another injured. I think that is the principle, and the grounds put forward by the company are not sufficient to justify the preference they have given to Messrs. Fletcher over the complainant, and, therefore, upon the whole, the rule ought to be made absolute.

J. Williams.—I am of the same opinion. I think that Mr. Manisty has failed to show that this case, in substance, is anything more or less than this, namely, that the company do, in point of fact, prefer Messrs. Fletcher to the applicant, in charging lower rates to Messrs. Fletcher than they do to him. The question is, whether this is an undue preference? Now I assume that it is not undue in the sense that the company favour one more than the other from any undue motive or partiality to the one or the other, but simply because they are afraid that, if they do not give this preference to Messrs. Fletcher, their landlord, Lord Lonsdale, will make a railroad of his own, and will provide some mode of withdrawing the traffic from the present company, the Cockermouth and Workington Railway Company, altogether. The question is, whether a preference given under such an influence is an undue one? I think it is. I think if we were to hold otherwise, we should be defeating that principle which would constitute a preference in every instance where a railway company thought, and might *bonâ fide* think, there was a preference to their advantage. I think these considerations are far too remote to govern such a question. Other reasons are given by my Lord. I think, on that ground, they are no answer to the suggestion that this is an undue preference. It has been said that someexpenses have been incurred by Lord Lonsdale, in approximating the produce of his pits to the railroad, and that if the company choose to take that into consideration, and make an al-

lowance for him in the shape of a reduction of the tolls in favour of the coals that have been approximated to the railway, in consideration of that expense, that that is not an undue preference. I think it is. And it is to be further remarked, that railways, though they are executed to directly benefit individuals, yet are passed, in violation of the common law of the land, on principles that they shall not only contribute to the advantage of the adventurers, but also to the general benefit of the public. In making a public railroad, any man who is the proprietor of land has, by the natural position of his land, an advantage of being near the railroad; he has a right to the advantage which nobody can legally disturb or diminish. Now, it would be very unjust if it were not so, because the proprietor of land so situated may withdraw his opposition to the Bill in Parliament; he may have sold his land without difficulty to the company, in contemplation of having this advantage when the railway Bill had passed: that being so, the railway company cannot deprive him of any benefit by saying, that somebody who is at a greater distance, over whom for that reason he has an advantage, and who should better that position by spending money for the purpose of bringing himself, as it were, to an equal distance that he shall be allowed for that by having his coals and other things carried at a lower rate; that would be, in fact, depriving him of his advantage to a very considerable extent. For these reasons, I think, on the second ground, there is no case at all for warranting us in coming to the conclusion that this, though *prima facie* an undue preference, is, in point of fact, none. I think, therefore, that the rule must be made absolute.

J. CROWDER: I think the rule must be absolute. In arriving at that conclusion I do not propose to lay down any precise definition of undue preference that will include every case. It may be difficult to anticipate cases, or to lay down such a definition as would govern all the cases that may be brought before us; but I think the definition, whatever it may be, of undue preference, is certainly not to be confined to the partiality of an individual, or a company for some individual. It must be wider than that. It has been argued before us, on the part of Mr. Manisty, that in this case there is no partiality attempted to be shown to Lord Lonsdale's tenants as against the other party, and that whatever they have done, therefore, is without the Act of Parliament. It is said that whatever circumstances there may be which make the position of one individual different from another, the company may take those circumstances into consideration, and make a different charge. I apprehend they can do no such thing. For if they were to be allowed, with reference to passengers as well as to traffic, it would be difficult to say the circumstances of any two individuals going by a railway were precisely the same, and a most extraordinary variety of charge may be justified. I think that cannot be at all the principle to be taken into consideration. I agree with my brother

Williams, that everybody on a line of railway has a right to the fair advantage of his proximity to that railway, and that it is not for the railway company to compensate other individuals from a distance who send goods. That has been laid down, in a case we considered, by my brother Cresswell, which was the first case that came before us—the case of *Ransome* v. *The Eastern Counties Railway*. It was at the bar discussed, whether there was a difference of rate imposed by the railway company, under the circumstances of the case, and where, as exists in many cases, a different rate is imposed for the carriage of a certain number of tons at a time, from that imposed upon a certain other lesser number of tons or pounds, and where it may be shown fairly there would be a difference in the cost of conveyance. It may well be conceived in a case of that kind, that the using one engine for a large quantity, and being under the necessity of using the same for the conveyance of a much less quantity, the rate being different is justified in respect of that. As my Lord has put it, there are many cases of a through line, and the traffic passing from one terminus to another, or to the end of the line, in which they may be justified in making a different charge on goods taken from one end of the line to the other from the rate imposed on goods taken to a point intermediately with reference to either of the termini. That may very fairly be taken into consideration. But, upon the present occasion, the only real substantial ground on which it is contended that this is not an undue preference is, that in this same locality, where several pits and collieries exist, in reference to some there is a threat held out, that unless they take the produce of those pits at a cheaper rate than they do that of the others, it would probably be carried by some railway which is threatened to be made by a powerful person in the neighbourhood. In my opinion, that is, really an insufficient ground to justify a variation in the rate of charge—that threat of opposition, and thus inducing them to take the coals from one colliery as against the coals of another colliery in the same locality. It seems to me clearly an undue preference within the meaning of the Act of Parliament: and, therefore, I think the rule must be made absolute.

J. WILLES.—I am entirely of the same opinion. With reference to the fact of the applicant and Messrs. Fletcher using different parts of the line of railway, it is clear that is not a foundation for the difference of charge. I think, from the course which the argument has taken, one must assume the difference in the rate of charge does not represent any proportionate difference on the footing of a different length of line being used. I understand that is not so, and the charge cannot be sustained on that ground that a greater length of railway is used by Mr. Harris than the other. The real ground on which the railway company make a greater charge to Mr. Harris than they do to the Messrs. Fletcher is, because Messrs. Fletcher are Lord Lonsdale's tenants; and it is suggested, though by no means made out in point of fact, and probably

it was not so, when the Railway Act was passed it contained a provision by which Lord Lonsdale could make a railway over the other railway, and it is suggested that if Lord Lonsdale should make such a railway, he might be brought to withdraw Messrs. Fletcher's traffic from the line of the present company against whom the application is made, and so might injure the company, unles they agreed to take Messrs. Fletcher's coals for a less price than they did Mr. Harris's. The effect of that argument is, that they are entitled by so doing to buy off the danger which might arise to the company if Lord Lonsdale should be minded to make this railway, and should actually do it. One cannot help seeing at once that it is entering into a field of speculation, to say nothing more of it as to what may or may not possibly happen in *futuro*. The foundation of the whole argument is the possible railway which Lord Lonsdale may make or which he may not make. But the law, it is said, generally looks to that which is proximate, and in dealing with objections of this description, I think it is much safer to look to the state of things actually existing in which both parties are at the passing of the Act—of being near a railway, with natural advantages which they have a right to apply, namely, of having a railway quite near to them in lieu of no railway at all existing. And you might go on to speculate that if such a railway ever should be made, and should require the sanction of Parliament, which probably, or at least possibly, it would have, that persons in the position of Mr. Harris would be enabled by the provisions of the general Act, which, of course, the local Act would refer to, to use that railway upon the same terms as Lord Lonsdale's tenants, and so, peradventure, they might acquire, in the possible case which has been suggested, the same advantages which they thus seek by this rule. It is quite obvious such considerations as suggested demonstrate the absurdity of proceeding upon any such speculation at all in the existing state of things. All that remains to be said is, that Mr. Harris is charged more than the Messrs. Fletcher, which, under the Act of Parliament, ought not to be. I think, therefore, the rule ought to be made absolute.

Rule absolute accordingly.

BAXENDALE AND ANOTHER v. THE GREAT WESTERN RAILWAY COMPANY.

(LAW TIMES REPORTS, Vol. 32, 131.—28, LAW J., C.P. 81.)

Undue preference.— Where a railway company carries on a trade independent of that of the railway, the court will interfere to prevent its giving an undue preference to itself in respect of the independent trade.

The ATTORNEY-GENERAL and Mr. FIELD showed cause against the rule.

Mr. BOVILL, Q.C. (with whom was Mr. C. POLLOCK), argued in support of it.

The facts and arguments are stated in the judgment.

C. J. COCKBURN, delivered the judgment of the court.—In the case of *Baxendale and others* v. *The Great Western Railway Company* we are of opinion, without further calling on the counsel for the complainants, that this rule must be made absolute. The facts are strictly these.—Down to a recent period the defendants, the Great Western Railway Company, charged an uniform rate of 3s. 6d. a ton on all goods conveyed on their railway between their stations at Reading and Paddington. The goods were collected and delivered principally by the complainants, Baxendale and Company, at a charge of 4s. 10d. per ton. The railway company have now raised the charge for carrying goods under five hundred weight to 8s. 4d., being the aggregate of the former charge of carrying and that of collecting and delivering, with an intimation to the public that the company will collect and deliver goods free of all charges. It is alleged, on the part of the complainants, and scarcely denied on the part of the defendants, that the real purpose of this arrangement is to compel persons, desiring to have their goods conveyed by the railway, to employ the railway company to collect and deliver such goods; and thus to secure this business, and the profit upon it to the defendants, as well as to exclude the complainants from competing with the defendants in this department of business. We entertain no doubt that this representation is true, and that such is the purpose and will be the effect of this scheme of the company, if it is suffered to be carried out. Some attempt, indeed, was made to show that a desire to avoid competition with other railways had prompted the alteration in the rate of charge; but the attempt totally failed, and is unworthy of further consideration. The main stand made by the counsel for the company was on the ground, first, that, although the Legislature has imposed on railway companies the obligation of affording accommodation on equal terms to the public, it cannot have been the intention to deprive them of the right possessed by all trading companies, as well as by individuals, of using their property and managing their affairs, within the scope of the purposes for which they are constituted, in such manner as they think to their advantage; and, secondly, that in the present instance the company have, by Act of Parliament, the power of raising their tolls at their own will and pleasure, provided they raise them equally as against all persons. That here they had raised them equally against all, and that it was not within the authority of this court to fix limits to the amount of accommodation which the company might think proper to afford gratuitously beyond the conveyance by the railway for which the toll was charged. We think there is little difficulty in disposing of this argument. It is abundantly clear from the statutory enactments which enjoin on railway companies the obligation to afford accommodation on equal and reasonable terms, and from the provision of the statute by which jurisdiction is given to

this court against affording undue preference or of imposing undue prejudice or disadvantage, that it was not the intention of the Legislature to leave railway companies in the unfettered exercise of their rights as proprietors of their respective lines; but, in return for this great power that is conceded to them, and of the monopoly of the carrying business of the country, which in a great degree they have been enabled to acquire, has imposed upon them the obligation of affording accommodation on equal terms to the whole of the public. The policy and justice of such a requirement are manifest. It being obvious that the power of the railway company in the monopoly, under the impossibility of all competition, might otherwise be converted into a means of very grievous oppression by a difference in point of fact, or in point of accommodation made in favour of one man at the expense of another, or by disadvantages in respect either to the charge or accommodation imposed on one as compared with another; and it is plain that the operative effect of such inequality will be equally great whether its motive and operation be to benefit third parties, or the railway company itself. Such being plainly the intention of the Legislature, and this court having been constituted the tribunal by which any injustice or inequality in the working of the railway system, as between the companies and the public, are to be redressed, we must endeavour to prevent any injustice either in the rate of charge or the degree of accommodation afforded; at the same time that we carefully avoid interfering, except where absolutely necessary for the above purposes, with the ordinary right which (subject to the before named qualification) a railway company in common with any company or individual possesses of regulating or managing its own affairs, either with regard to charge or accommodation, or to the agreements and bargains it may make in its particular business. Greater difficulty no doubt arises in dealing with cases in which the purpose and effect of the matter to be considered, although it may incidently have the effect of prejudicing third parties, is in reality to benefit the company itself, than those in which the immediate object is to give an undue advantage for the benefit of a third party; yet we think that no serious difficulty will be found in ascertaining the principle on which the authority of the court should be exercised. It may be convenient in the first place to advert to a distinction not always kept sight of in arguments between cases in which the interests of the company sought to be promoted by the regulation or act complained of is one which arises with reference to the railway itself as to which the question occurs, and those in which the benefit sought to be obtained by the company is one which has reference to interests distinct from those of a particular railway: as where, for example, the company are the proprietors of another railway, and where it is carrying on some other business. In the latter class of cases, it appears to us clear that the company must be taken to be, *quoad* the particular railway, in the position of third parties, and that they cannot, with a view to such separate

interests, give an undue preference or impose an unreasonable disadvantage any more than they could do so to promote the interests of any other party. Thus, if the railway company, being proprietors of one line from A. to B., and another line from C. to D., were, in order to obtain the custom of a particular individual on the first of these lines, on which they might be subject to competition from a rival line, to agree to convey his goods on the line from C. to D. at a cheaper rate than those of another person using only the latter line; or if a railway company carrying on, in addition to its business as carriers on the line, that of carriers to and from the termini of the railway, were, with a view to obtain additional custom on the latter, to carry on the railway for those who so employed them as carriers to and from the railway at a lower rate than for those who did not; in both these cases we should have no difficulty in holding that the company must be considered, as regards their separate interests, in the light of third parties, and that they cannot promote their interests at the expense of the right of the public to that equality on the particular railway which it was the intention of the Act of Parliament to secure. Greater difficulty of necessity perhaps arises in dealing with cases in which the purposes and effect of the thing complained of is the benefit of the company in their character of proprietors of a particular railway. In these cases the court might feel greater reluctance to interpose, partly from an unwillingness to interfere with parties in the management of their own affairs, for their own advantage; partly from a disposition to give companies credit for acting on an enlightened view of their own interests, as identified with those of the public: yet if the court becomes clearly satisfied that the company was seeking to promote its own advantage by establishing an inequality which was unreasonable under the circumstances, and operated unfairly upon particular individuals, or that it was affording to one person, or to persons, an advantage which it could not afford to another under similar circumstances; this court will not hesitate to interfere to prevent such a result, although by so doing they might prevent the company from securing all the profit that it might otherwise have derived from the use of its property. Thus, where the complaint was that the railway company for carrying between two intermediate stations charged a higher rate than was due to the intermediate service in proportion to the charge made on the entire line of railway, this court, if it were made to appear that the proportion was not justified by the circumstances of the traffic —in other words, was an undue prejudice or unreasonable disadvantage to those using the part of the railway in question—would interfere to set aside such agreement. So again, if an arrangement were made by a railway company, whereby persons bringing a larger amount of traffic to the railway should have their goods carried on more favourable terms than those bringing a less quantity, although the court might uphold such an agreement as

an ordinary incident of commercial economy, provided the same advantage were extended to all persons under the like circumstances, yet it would assuredly insist on the the latter condition. It would endeavour to do so in the case of any special agreement by which the company had secured to a particular individual the benefit of such an agreement to the exclusion of others; or even where an attempt had been made, by keeping the agreement secret, to make it operate undoubtedly to the prejudice of third parties. This reasoning appears to us effectually to dispose of the argument that the court cannot interfere to prevent a railway from fixing the rates of toll to be taken on the railway in such manner as shall most promote its own interests in cases where by so doing the company subject others to unreasonable disadvantage, or operates to their prejudice by giving undue preference to third parties. We proceed to consider the second argument taken by the defendant, which is in substance that, having power to raise their rates of charge for carrying on their line, and having done so equally as regards all, they do not come within the statutory prohibition against undue preference or undue prejudice, by affording other accommodation in addition to that of carrying on the line. We think this argument rests on two obvious fallacies: that of supposing that the charge in question is one made by the company in reference to their character or interests with respect to the railway, whereas in reality the charge is made by them in another character, and independently of the railway, namely, as carriers to and from the termini of the railway; and secondly, that the company can convert that which is in reality a charge for collecting and delivering as well as for carrying, into one for carrying only, by affixing to it the latter denomination in their table of fares. It is true, no doubt, that the company's Acts give them power to impose their own rates and charges on the carriage of this description of traffic; but these Acts give them no power to impose tolls or charges for collecting and delivering, and it is palpably an abuse of their power, if, under the name of a charge for carrying on their line, they impose, otherwise than with the assent of the parties concerned, a charge for a totally different thing. Although the Legislature has conferred the power of imposing rates and charges, it has annexed to this power the obligation of imposing such rates equally. A company cannot be permitted to avoid this obligation by colourably pretending that that is a charge for carriage only, which is, in fact, a charge for other things as well as for carriage. The court is bound to look at the transaction in its true light, and cannot suffer itself to be diverted from its duty of interfering to prevent what, in fact, is such an injustice as it was the purpose of the Legislature to prevent, because the transaction is attempted to be covered over by a transparent disguise. Looking, then, at the alteration of the toll in its true light, we are of opinion that the agreement is objectionable both as an undue preference given on the one hand, and as an unreasonable disadvantage imposed on the other. It is an

undue preference to the company in their separate capacity of carriers other than on the line of railway, inasmuch as they thereby secured to themselves the entire monopoly of the last mentioned traffic, to the entire exclusion of the complainants and all others. It is an undue prejudice and an unreasonable disadvantage imposed on the complainants, inasmuch as it is plain that their goods and those of all persons employing them—as, indeed, the goods of all persons other than those who employ the company to collect and deliver—must be subjected, as compared with the goods of the latter, twice over to the expenses attendant on collection and delivering, if they were required to collect and deliver for them, or to an unnecessary charge if they required no such accommodation. On these grounds we are of opinion that the case is one within the mischief and provisions of the Act; that it is our duty to interfere; and that, consequently, this rule must be made absolute.

Rule absolute.

NOVEMBER 9, 1857.—BAXENDALE v. THE NORTH DEVON RAILWAY COMPANY.

(LAW TIMES' REPORTS, VOL. 30., 134.)

A company cannot make preferential rates as regards goods collected by a particular carrier.

This was a rule obtained last term, by C. Pollock calling on the defendants to shew cause why a writ of injunction should not issue against them, under the Railways and Canal Traffic regulation Act 17 and 18 Vict., c. 13. "Enjoining them to charge the same rate for all goods of the same class from Bristol to Barnstaple, and also enjoining the said company to charge the complainant and the rest of the public for the carriage from Bristol to Barnstaple of goods coming from Manchester, the same rate as they charge for the like goods when they come from their own agents.

Mr. MILWARD, (Mr. LUSH, Q.C., with him), now showed cause. The facts necessary for consideration in this case are briefly these:—The plaintiffs are the well-known firm of Pickford's, common carriers to all parts of these kingdoms. There is a considerable traffic in goods, called Manchester packs, from Manchester to Barnstaple, on the defendants' line. These goods are conveyed, first, partly over the London and North-Western Railway, then over the Midland Railway to Bristol, thence along the Bristol and Exeter line to Credition, where they enter on the defendants' line, and are carried along it to Barnstaple. Formerly there was an uniform charge of £2 12s. 6d. per ton upon such goods, for the whole distance, but latterly the defendants have altered the rates, reducing it to £2 10s. for all goods sent by "Carver and Co.," from Manchester, to the care of J. C. Wall, of Bristol, whilst they kept the rate at £2 12s. 6d. on all goods sent by the complainants or the general public, and not forwarded through Carver

at Manchester, and Wall, at Bristol. Carver is forwarding Agent at Manchester, and Wall at Bristol. The defendants' line is worked by certain parties named Brassey and Ogilvie, under a lease, and the circular forwarded to the trade in Barnstaple, announcing the arrangement complained of, was as follows:—Sir, I have the pleasure to inform you, that I have entered into arrangements with the Bristol and Exeter Railway Company, by which "Manchester Packs" will in future be charged at a through rate of 50s. per ton to include collection and delivery. Small packages of this kind under 1 cwt. will be 2s. 6d. each package; all above, at the tonnage rates. These rates can only be assured to the consignees by ordering their packs by Carver and Co., from Manchester to the care of J. C. Wall, Bristol, who will forward them on immediately. In drawing your attention to the low rate of conveyance for these goods, I would respectfully solicit your general orders through the railway, the traffic of which can only be fully developed when it receives the fair support of the mercantile and trading classes. I am, &c., Robert Ogilvie, manager." It is alleged in the affidavits that the object of this arrangement is to enable the railway to compete with a steamer plying between Bristol and Barnstaple. The goods are collected in Manchester by Carver and Co., and by them forwarded to the care of Wall at Bristol, who sees to their being duly transhipped from the Midland Railway to the Bristol and Exeter Railway, whence they pass on in the same carriages to the defendants' line. It is submitted that, as far as conveyance from Bristol to Credition is concerned, the Bristol and Exeter Railway Company are to blame if any one is; but we have to contend that no person is responsible at all. [C. J. Cockburn: The first question to determine is, at what part of the line the inequality arises?] It must be assumed it arises in part of the defendants' line, but partly also on the Bristol and Exeter line. The defendants had in fact nothing whatever to do with the arrangement; they merely came into it, at the instance of the Bristol and Exeter Company, who say that they made the regulations complained of for the public interest. [J. Crowder: Supposing, A. B. in Manchester acted as Carver does, and collects goods, why is he not to have the advantage of the lower rate of charge?] The answer is, that if A. B. will take his goods to Carver he will secure the advantage. If this arrangement had not been made the railway would not have had the goods at all—they would have been sent by sea from Bristol; therefore it is for the public benefit that competition between the two modes of conveyance should exist and be kept up. This case is within the rule in Ransome's case, where it was laid down that railways may make any arrangements for carriage which they please provided the public interest is not thereby prejudicially affected. All that the complainant here asks is, that the defendants will carry for him at 50s. per ton, and the defendants say they will if he will send his goods to Carver the collecting and

forwarding agent at Manchester. [C. J. Cockburn: I want to know what the railway have to do with collecting goods in Manchester; their proper business is to carry and not to collect.] The grievance of complaint is that the goods are compelled to pass through the hands of Wall at Bristol, in transhipment from the Midland to the Bristol and Exeter Railway. It is particularly urged that this is done purely in the interest of the public, and not with the view of giving any one an undue favor or advantage. [C. J. COCKBURN: The effect of the new regulation is practically this, "You must send no more goods by Baxendale, you must send by Carver."] The defendants can carry cheaper when the goods come through Carver as compared with goods forwarded by complainant. [C. J. COCKBURN: You say that that is so, but I want to know why so?] For this reason—if a very large mass of goods comes to the railway by one particular person, the cost is less to the company than if the goods are taken from several persons. The principle laid down in Ransome's case, 1 C.B., N.S. 437, is that the fair interest of the railway company is to be taken into account. It has been held in the Caterham case, 1 C.B., N.S., 410, that it must be for travelling over the same line, or some portion of the same line. [J. WILLIAMS: In considering this question, you must strike out the 30s. charged for carriage from Manchester and Bristol; and take the difference between 20s. and 22s. 6d. charged by defendants for goods from Bristol to Barnstaple.] We say, that in the first place, it is an arrangement beneficial to the public, as distinguished from carriers; secondly, it is an arrangement forced on the defendants by the Bristol and Exeter Company; and the complainant may have the same advantage as is offered to the public, if he will take his goods to Carver; lastly, there is no fair comparison of the distance under which the goods are carried; therefore, this rule should be discharged.

Serjt. BYLES and C. POLLOCK in support of the rule.—This rule should be made absolute. The defendants are bound to charge all their customers the same rate, whether carriers or the general public, does not matter, they can make no difference. The defendants have entered into an arrangement by which the public have to pay a larger sum, if they employ one carrier than if they employ another. It is the defendants who mix up all the charges of the three different lines together, making one bargain for going over all the lines. [J. WILLIAMS: Does the statute give us power to order the defendants to carry at a particular rate when the goods are brought in part at one charge over other lines than their own?—C. J. COCKBURN: The fact is, that the rule should be against all the railway companies concerned.] The complainant cannot fix the Bristol and Exeter, because it is the defendants who regulate the charge. [J. CROWDER: What is the charge they make between Credition and Barnstaple?] That is hard to say; but we show that they do not take any goods for 20s., unless they be sent through Carver and Wall; the difference between

20s. and 22s. 6d. goes over the whole distance from Bristol to Barnstaple. [C. J. COCKBURN: Will you be satisfied to take the rule against the North Devon alone in the limited form?] Yes. C. J. COCKBURN: The rule will, therefore, be absolute for an injunction, enjoining the defendants to charge the same rate for "Manchester packs" from Credition to Barnstaple, as they charge for the light goods under any circumstances —Rule accordingly.

MAY 27TH AND 31ST, AND NOVEMBER 9TH.

BAXENDALE AND OTHERS v. THE GREAT WESTERN RAILWAY COMPANY.

(32 LAW TIMES, PAGE 160.—28 LAW J., C.P. 69.)

It is not a legitimate ground for preference to a person that he engages to employ other lines of the company also.

The ATTORNEY-GENERAL and Mr. FIELD shewed cause against a rule enjoining the respondents to carry paper and other goods at the same rate for the complainants as they charged to one Wm. Somerville; also to desist from charging Somerville less than they charged the complainants; also to desist from charging the complainants for carriage more than they charge Somerville.

Mr. BOVILL, Q.C., and Mr. C. POLLOCK were heard in support of the rule.

The facts and arguments are sufficiently stated in the judgment.

Nov. 9.— Justice WILLES delivered judgment. This was a rule obtained by the persons carrying on business under the firm of Pickford and Co., calling upon the Great Western Railway Company to shew cause why a writ of injunction should not issue, enjoining them to desist from an alleged preference to Mr. Somerville over the complainants in respect of the carriage of paper manufactured by him, and carried by the respondents from Bristol to London. The material facts are as follows: The complainants are common carriers from Bristol to London, using for that purpose the Great Western Railway. They are also common carriers from Bristol to various other places, using for that purpose lines in rivalry with the Great Western Railway Company's lines, other than that from Bristol to London. William Somerville is a paper manufacturer at Bitton, near Bristol, who is in the habit of sending large quantities of paper to London, and also to other places before mentioned. Prior to August last, Mr. Somerville employed the complainants to carry his paper to London and deliver it there, and the complainants employed the respondents to carry it on their railway from the station at Bristol, where it was delivered by Somerville, to the station at Paddington, where it was received by Pickford and Co., they delivering it in London. At that time the respondents charged the complainants at the rate of 22s. 1d. per ton, being their charge for first-class goods, including cartage to and from the railways, deducting in fact 1s. 6d. for the cartage to the station at Bristol

and 3s. 4d. for the cartage in London; and the complainants made their profit upon the cartage in London. In the month of Augustt 1857, the respondents varied the charge for the carriage of the paper from 22s. 1d., the charge for goods of the first-class in their printed scale of charges, to 35s. per ton, the charge for goods of of the third-class in that scale. The complainants in consequence made a proportionate increase in their rate of charge to Somerville. In the following month Somerville complained of the increased charge, and stated that unless it was reduced he would send his goods by sea. A correspondence followed between the complainants and the respondents, in which the former endeavoured to pursuade the latter to reduce the charge, pointing out that otherwise Somerville's goods would go by sea instead of by railway; but the latter refused to make any reduction. This part of the correspondence closed on the 14th of November, 1857. Shortly afterwards the complainants learned that the respondents were carrying Somerville's goods at the rate of 23s. 4d. per ton, including cartage from Paddington, in order, as the complainants allege, to induce Somerville to send his paper through the respondents instead of through the complainants as formerly. Thereupon, on the 2nd of December, 1857, the complainants wrote to the respondents remonstrating upon the course that had been taken. The reply of the respondents follows on the 14th; and then upon the 16th of December, 1857, the following further reply was sent by the respondents to the complainants, stating in the most distinct manner the position assumed by the respondents in this litigation. That letter is set out on the affidavit of Joseph Baxendale, and contains these words:—"The board presume that it is not your intention to undertake to transmit by this railway all traffic which you can obtain for the places to which this railway are carriers, inasmuch as they know that you are engaged in taking away by other lines as much as you can obtain and influence." The complainants did not comply with the terms required in that letter, and after an ineffectual attempt to alter the decision of the respondents stated therein, the complainants made this application to the court, stating amongst others the above facts, and that the paper now carried by the company for Somerville is the same as to quantity and quality, and mode and cost of carriage, and in all other respects as when carried by the complainants, and that in fact there is no circumstance to justify the different charge now made. The respondents, in answer to the case, set up in effect that they carry for Somerville upon the terms of a special agreement between them and him, containing stipulations so much to their advantage as to be worth the whole difference of charge. The terms of the agreement, as stated in the affidavit of James Grierson, the respondents' general superintendent of goods traffic, are those which I shall now refer to. He states "The rate of 23s. 4d. per ton agreed upon for paper between Bristol and London, which was to include the cartage in London but not at Bristol; and the paper according to that rate was to be at the

risk of the said Wm. Somerville, who was also to send all the other goods he had to send at the ordinary rates by the said company, and also to send all his goods, including paper, by the said company, which were going to any place to which the said railway carried." The statement of such an agreement in the affidavit of Charles Wilkinson adds that Mr. Somerville also promised to influence any persons he could to send goods by the Great Western Railway. In other respects the statement of the agreement is the same. It appears the terms of the agreement as existing were twice reduced to writing—on the 9th December, by a letter to Mr. Somerville, by which the terms appear to be the same as those stated by Grierson, except no statement is made by Mr. Somerville to take the risk of the goods on himself; and subsequently in a letter of the 17th of February, 1858, in which the terms are stated. In neither of these letters is the additional term stated by Mr. Wilkinson. On the part of the respondents it is further stated that it is a great gain to the company, and a fair equivalent for the difference of charge to have the advantage they derive by securing the whole of the traffic of Somerville, or in which he is interested, to the north of England and elsewhere upon their lines, other than that between Bristol and London; together with the advantage of the goods being carried from Bristol to London at Somerville's risk. It is not alleged in the affidavit, nor was it suggested in the argument, that the insurance upon Somerville's goods from Bristol to London alone was worth the difference of charge—nearly one-third of the entire price of carriage; and it is clear from the correspondence, that the respondents never would set that up as the cause of difference of charge, and would not have given the complainants the benefit of the difference, even if the latter had taken upon themselves the risk. Indeed, they never had an opportunity of doing this, because they never were informed that it was part of the agreement with Somerville; and they were not required by the letter of the 16th Dec. to take it upon themselves. The question, therefore is reduced to this, WHETHER IT IS A LEGITIMATE GROUND FOR GIVING A PREFERENCE TO ONE OF THE CUSTOMERS OF THE RAILWAY, THAT HE ENGAGES TO EMPLOY OTHER LINES OF THE COMPANY for traffic distinct from and unconnected with the goods in question for their carriage. WE ARE OF OPINION THAT IT IS NOT. The goods are the same in quantity and quality, in the cost of receiving and carriage, and in the profit which is thereby made, whether they be received from Somerville or from the complainants; and it is undue and unreasonable to charge more or less for the same service, *according as the customer of the railway thinks proper or not to bind himself to employ* them in other business totally distinct. In this respect the present case is altogether distinguishable from that of Nicholson against the same respondents, in which a difference of charge was sustained upon goods from the same place between persons who sent *large* quantities of goods at a time, and stipulated to send large quantities every year, and others who declined to do so.

The advantages there stipulated for by the company related to the carriage of the goods upon the same line and directly affected the rate at which they could profitably be carried. In fact, those advantages made a difference similar to that between that of selling wholesale or retail, the profit of carrying the goods sent in large quantities, at the less rate at which they were carried equalling or exceeding the profit upon the goods sent in smaller quantities at the greater rate at which they were carried. In the present case, as already explained, the advantages stipulated for are wholly distinct from and do not affect the price or profit of this carriage from Bristol to London, and they ought not to be taken into account in determining the charge for such carriage. Upon this ground, therefore, as to which the facts cannot be disputed, and without entering into the other points urged on the part of the complainants, we think they are entitled to the relief they ask :—" Injunction to restrain the company from &c. (as in the rule), and to abstain from giving to the complainants or their traffic from Bristol to London any undue or unreasonable prejudice or disadvantage in any respect whatever."—The rule will be absolute in these terms, and with costs.

JUNE 1, 1858.—COOPER v. THE LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

(27 LAW JOURNAL, C.P., 324.)

A Company ought to discontinue, on request, to unload trucks for one person, if they refuse to do the same for another, and thereby subject the latter to disadvantage.

This was a rule calling upon the London and South-Western Railway Company to shew cause why a writ of injunction should not issue against them, pursuant to the Railway and Canal Traffic Act, 1854, (17 and 18 Vict. c. 31) enjoining the said company to *unload the trucks*, or other conveyances of the said company containing goods consigned to one Charles C. Cooper, the complainant, at their station at Nine Elms, Vauxhall, *and to deliver such goods to the said Charles C. Cooper*, by placing the same in or adjacent to the waggons or other conveyances of the said C. C. Cooper, which might be placed to receive the same at their said station. The rule was obtained upon an affidavit by the complainant, in which he stated that he was a licensed carman and contractor for the carriage of goods, and was almost daily employed as the consignee at Nine Elms for the conveyance of goods on their transit from the Southampton Docks to various parts of London. That the railway company convey goods from the said Southampton Docks to their station at Nine Elms, at a charge of 13s. per ton for such goods as are classed under the rate number 2 in the scale of charges of the company; that the company had until recently employed their own servants to unload the trucks, or other conveyances containing goods consigned to persons at their station

at Nine Elms, and delivered such goods to the consignees, by placing the same in or adjacent to the waggons or other conveyances of the consignees, there to receive the same; that he, the complainant, had various lots of goods consigned to him from Southampton Docks to Nine Elms, on which the said charge of 13s. per ton had been paid for the carriage thereof; and that the company refused and declined to unload the trucks and other conveyances containing the said goods as theretofore they had done, whereby he was compelled to employ his own servants to unload such goods, and to convey the same from the trucks and other conveyances of the said company to his waggons. That since the company had refused to unload trucks containing goods consigned to him, he had carefully watched and inquired whether the same rule was observed respecting goods consigned to other persons; and that the said company still continued to unload the goods of other persons than himself at the Nine Elms station; and that by so doing the company gave an undue or unreasonable advantage to or in favour of such persons, and caused an undue and unreasonable prejudice or disadvantage to complainant. In answer to this, there was an affidavit by the superintendent of the goods department of the company to the effect that the said charge of 13s. per ton for goods was applicable only to the railway transit from the Southampton Docks to the station at Nine Elms, and that the labour of transfer from the railway-trucks to the company's vans for delivery, was not included therein, but was charged for in an extra rate for delivery of dock goods to bonded or other ware-houses in London; that the complainant had previously been in the service of the company, and that before he quitted such service and embarked in his avocation of carman, the delivery of goods from the station at Nine Elms was performed by the company themselves in their own vans, save and except the goods of Messrs. Pickford; that the dealings of other parties than the complainant with the company had no parallel with that of complainant, except to a certain extent, the dealings of Messrs. Pickford with the company as general carriers, to whom in that character, goods were consigned for transit by the company's railway from Southampton, including consignments from the Southampton Docks, which the said Messrs. Pickford transmitted as consignors and consignees, but such consignments were composed generally of different classes of goods charged by the company at differential rates, including labour in the transfer from the railway to vans for delivery; that in some instances, but not frequently, such consignments included goods arriving at Nine Elms from the Southampton Docks, on which the said rate of 13s. a ton is charged by the company for their transit on the railway, and which goods the company transferred into the conveyances of the Messrs. Pickford; but that this was a convenience to the company, as such goods were mixed up with the company's traffic, owing to the quantity for Messrs. Pickford not being sufficient to run a separate truck, and that their goods were, therefore, placed in the

same trucks which contained goods for the company's own delivery, whilst the traffic of the complainant was in almost all instances kept separate from the company's, and brought up in separate trucks; and, further, that the charge of 13s. per ton was about 6d. below the company's ordinary rate of charge for such class of goods; and that where such ordinary rate was charged, the company included the labour of loading and unloading, but not otherwise.

Mr. SMITH and Mr. MILWARD now shewed cause.—The complainant has no right to require the company to unload the trucks for him, which is what he asks for by this rule. The only case in which it appears the company do so, is that of Messrs. Pickford; but there it is not done as of right, or for the benefit of Messrs. Pickford, but for the convenience of the company; the goods of this class which are conveyed for Messrs. Pickford being of such small quantity that they are mixed with the goods carried for the company's own delivery, instead of being in separate trucks, like those belonging to the complainant; but it is not for so unloading Messrs. Pickford's goods that complaint is made. If Mr. Cooper had asked the company not to do this for Messrs. Pickford, the company would probably have abstained from continuing such practice. The company are obliged, however, to come here by the form of this rule, which asks the court to enjoin the company to allow the complainant the absolute right to have from the company the supply of labour in the transfer of the goods to the complainant's waggons.

Mr. BOVILL and Mr. PEARCE, in support of the rule.—The company do not deny that they have refused to unload the trucks containing Mr. Cooper's goods, although, until lately, they used to unload the trucks containing goods consigned to other persons, and they admit that they still do so for Messrs. Pickford. The company ought to do more than merely bring the goods in the trucks to the station; they ought to deliver them to the consignee, either by placing them in his carts, or in some convenient place adjacent to the same. *Richards* v. *the London, Brighton, and South Coast Railway Company*, shews that the responsibility of the company as carriers does not end at the station; in that case it was held to continue until the luggage was placed in the hackney carriage.

[J. WILLIAMS: That was because, there the company had chosen to undertake that duty.]

Then the complainant may ask the company to desist from their practice of unloading for Messrs. Pickford; for by continuing such practice the company give an advantage to Messrs. Pickford over Mr. Cooper.

[C. J. COCKBURN: The rule does not ask for this.]

[J. BYLES: The complainant should have got a refusal from the company to do for him what they were doing for Messrs. Pickford.]

[C. J. COCKBURN: Mr. Cooper did not say to the company, as

he ought to have done before he came here, you are doing this for others, and therefore I ask you to do it for me.]

It is manifest that the result would have been the same, if he had done so.

C. J. COCKBURN: Under all the circumstances, I am of opinion that this rule should be discharged. I do not say that Mr. Cooper has not *some grounds of complaint* against the company. It appears that the company, having formerly been in the habit of unloading goods conveyed by them on their railway from Southampton to London, by taking them out of the trucks, and placing them in or adjacent to the waggons of the consignees, have recently established a new system, and in the case of Mr. Cooper have declined to so unload his goods. It further appears that as regards Messrs. Pickford, the company have continued to allow their servants to unload Messrs. Pickford's goods, and to place them in Messrs. Pickford's carriages without extra charge. At the same time, it appears that the quantity of goods of this description brought for Messrs. Pickford, as compared with the quantity of those brought for Mr .Cooper, is very small. It also further appears that Mr. Cooper, instead of resting his complaint on that which he now puts forth as—and which in fact is—his only real ground of complaint, based it only on the circumstance that an indulgence, which had hitherto been conceded, had been withdrawn. If Mr. Cooper had stated the real ground of his complaint to the company, then, seeing that the company should not give an advantage to Messrs. Pickford which they did not give to Mr. Cooper, notwithstanding the comparative smallness of the amount to which it extended, the Company might have removed the ground of complaint, or if not, then we might have felt called on, not to make absolute the rule in the present form, but to mould it so as to meet the particular case. The rule, *as it is framed*, cannot be made absolute. We should inflict a grievous wrong upon the Company. This rule will therefore be discharged, but without costs, *and with an intimation from the court that the Company are not justified in their present course of proceeding, and that if they continue it, this court will probably interfere.*

J. WILLIAMS, J. WILLES, and J. BYLES, concurred.

Rule discharged, without costs.

JAN. 29, 1859.—GARTON AND ANOTHER v. THE GREAT WESTERN RAILWAY COMPANY.

(28 LAW JOURNAL, C.P., 158.)

To charge the same for carriage to or from a station as when collected and delivered by Company is improper, though adopted without profit, merely to get rid of the packed parcel system.

A rule had been obtained, in Michaelmas term last, on behalf of complainants, who were carriers at Bristol, calling on the com-

pany to show cause why an injunction should not issue, enjoining them to desist from giving an undue preference to themselves, and from collecting and carrying certain goods at such rates as to prejudice the complainants. The rule, and the grounds on which it was applied for, were similar to those in *Re Baxendale* v. *The Great Western Railway Company.*

The complaint was, that the Company charged for the carriage of goods under 500lb weight from the Paddington station, at the rate of 22s. 6d. per ton for first-class goods; 27s. 6d. per ton for second-class goods; 35s. per ton for third-class goods; 40s. per ton for fourth-class goods; and 45s. per ton for fifth-class goods; whilst they charged only the same rate when such goods were carted by the Company from the residence or place of business of the sender in London to the railway station at Paddington, and were then conveyed by them to the Bristol station, and afterwards delivered at the residence or place of business of the consignees at Bristol. Previously to the 12th of April, 1858, the company had allowed a deduction of 3s. 4d. per ton from these rates in respect of goods delivered at the Paddington station, and a reduction of 1s. 6d. per ton from these rates in respect of goods received by the consignee at the Bristol station, as in both these cases the expense of carting to and from the station was saved to the company; but on the 12th of April, 1858, they gave notice that they would no longer make any such deduction, and they accordingly ceased to make it from that time. The object of this was to induce persons who sent goods by the railway to employ the company to collect and deliver such goods, and to exclude carriers, such as the complainants from competing with the railway in such business.

Mr. MONTAGUE SMITH and Mr. FIELD now shewed cause.

[C. J. COCKBURN.—How is this case distinguishable from Baxendale *v.* the Great Western Railway Company ?]

The affidavits in this case distinctly make out that the allowance of 3s. 4d. per ton for London, and 1s. 6d per ton for country stations does not give any profit for the cost of collecting and delivering goods, and that the carriers themselves make their profit, not on the collection and delivery of the goods, but on the railway conveyance, by means of their system of making packed parcels of a great many small parcels.

[C. J. COCKBURN: We did not decide that case solely on that ground, but we thought, that even though the company derived no advantage from the collecting and delivery of parcels, still there was an undue prejudice and disadvantage imposed on those who did not want the advantage of having the goods collected and delivered for them.]

The system which carriers adopt of packing small parcels together operates injuriously to the railway company. It is stated on affidavit by the general manager of the goods department of the London and Brighton Railway Company, that "the company would gain much more by receiving the parcels un-

packed and not aggregated, than the cost of collection and delivery would amount to, and that it would be well worth their while to collect and deliver "smalls" for nothing, if they could thereby charge for the parcels as they are received from the public." There is here no preference or advantage shewn. The same charge is made to all, and no one but the common carriers complain; indeed, the public would rather gain than otherwise, if the company, instead of the carriers, were to collect and deliver parcels for them.

C. J. COCKBURN.—The company may very well wish to compete with the carriers; but still there remains, as has been already pointed out by the court, a large class of persons who may *not* wish to have their goods collected and delivered for them by the company, and who are as much prejudiced as the carriers by this system of charge, which includes that of collecting and delivery.

Mr. COLLIER appeared in support of the rule, but was not heard.

Rule absolute.

JANUARY 13, 1857.

BARRET v. THE GREAT NORTHERN AND THE MIDLAND RAILWAY COMPANIES.

(26. LAW JOURNAL REPORTS, C.P. 83; 1 C.B., N.S. 423.)

To support an application for continuous trains and through booking, a case of public inconvenience and not merely of private grievance must be made out.

This was a complaint under the Railway and Canal Traffic Act, 1854. The complainant, Joseph Morton Barret, stated the following, among other things, in his affidavit in support of his complaint:—

That he had frequent occasions to travel between London and Leeds and Leeds and Lancaster, and the intervening towns. That he had occasion on the 4th July last to travel between London and Settle, one of the towns upon the North Western Railway, between Leeds and Lancaster. That the North-Western Railway is worked by the Midland Railway Company, and such North-Western Railway has its southern terminus between Settle and Leeds at Skipton in Yorkshire. That the Midland Railway extends from Skipton to Leeds, and from Leeds the same Midland Railway extends on the one hand to Rugby, while it joins the London and North-Western Railway, which extends from Rugby into London, having its station at Euston Square; and on the other hand, the same Midland railway extends from Leeds to Methly, where it joins the Lancashire and Yorkshire railway, and such Lancashire and Yorkshire railway extends from Methly to Askern, in Yorkshire, where it joins the Great Northern Railway, and such Great Northern railway extends from Askern to London where it has its station at King's Cross. That the line

of railway from Settle through Skipton, Leeds, Methly and Askern to London is a continuous line. That the Great Northern Railway Company work continuous trains from King's Cross in London over their own line, over the Lancashire and Yorkshire from Askern to Methly, and over the Midland Railway from Methly into Leeds. That the line from Settle, through Skipton, Leeds, and Rugby to London, is also a continuous line, and continuous trains are worked by the London and North Western Railway Company from the Euston Square station in London to Rugby, and by the Midland Railway Company from Rugby to Settle. That the length of the route from King's Cross in London to Settle is eighteen miles and one quarter shorter than the route from Euston Square in London to Settle. That on the 3rd of July the said J. M. Barret, after formal notice by letter, applied on July 4th to be booked by the train leaving King's Cross Station at 9.30 a.m. through to Settle, in Yorkshire, and he offered to pay for such ticket. That having occasion to travel from Settle to London, on the 7th of July, he did on the 3rd of July, after formal notice to the Secretary of the Midland Railway Company at Derby, attend at the Settle Station, and applied for a ticket, which would enable him to pass through by the Great Northern Railway to King's Cross, and was refused. The booking clerk said, "I cannot book you to King's Cross, but I will book you to Euston Square." That finding he could not procure a through ticket to King's Cross he took a ticket to Leeds, and travelled by the train leaving Settle at a quarter to one o'clock in the afternoon, and reached Leeds about ten minutes before three o'clock in the afternoon of the same day. That he was set down at the Midland station at Leeds, where as he was informed and believes, a train was waiting to carry passengers on to Euston Square; but he found no train going on to King's Cross, and he was obliged to go and accordingly went to the Great Northern station, which is about a quarter of a mile lower down the same street, and took a ticket for the first train going to London, which left Leeds at ten minutes past four in the afternoon. That he then had to stay in Leeds about one hour and twenty minutes between the arrival of the train from Settle, and the departure of the train for London, and he arrived in London that evening by such train, which is due at King's Cross about a quarter past nine. That although the Midland and Great Northern Stations at Leeds are distinct, yet the Midland railway trains, in working from Settle into their own station in Leeds, pass by the entrance lines of the Great Northern station, and the Great Northern railway trains in working from their station in Leeds to London pass by the entrance lines of the Midland station, and he says there would be no difficulty whatever in the transfer of passengers if the trains of the Midland Railway Company and the Great Northern Railway Company worked to the stations of each other. That the route by the Great Northern line from Leeds to London is nineteen miles and a quarter shorter than the route by the

Midland line to London, and that if he had travelled from Leeds to Euston Square, he must have passed over this greater distance. The complainant (Nov. 5th, 1856) obtained a rule *nisi*, calling on the Great Northern Railway Company and the Midland Railway Company to shew cause why a writ or writs of injunction should not issue against such companies respectively, enjoining them to cause trains to run from their respective stations at Leeds, in the county of York, southwards to the terminus of the Great Northern Railway Company at King's Cross, in the County of Middlesex, and Northwards, to the Terminus of the North Western Railway, at Lancaster, by which passengers arriving at Leeds aforesaid from King's Cross, or from any other station on the Great Northern Railway on the South, or from Lancaster or any other station on the North Western Railway, or on the Midland Railway on the North, and desiring to proceed from Leeds to Lancaster or to any other station on the North Western Railway or the Midland Railway on the North, or to King's Cross or any other station on the Great Northern Railway on the South, may be forwarded from Leeds aforesaid, without any unreasonable prejudice or disadvantage.

Affidavits were filed in answer to the rules, stating, among other things, that there never had been any complaint by the public of the existing arrangements objected to by Mr. Barret.

Sir FITZROY KELLY, Mr. MELLOR, and Mr. PHIPSON *(January* 13) shewed cause on behalf of the North Midland Railway Company; and

Mr. BECKETT DENISON and Mr. ROCHFORT CLARKE, on behalf of the Great Northern Railway Company.

Serjeant BYLES and Mr. WELSBY appeared in support of the rule.

It is unnecessary to set out the argument.

Chief Justice COCKBURN: I think the rule ought to be discharged. No case has been made out for the interposition of the court. I quite concur that it is not necessary to shew a case of individual grievance; but on the other hand, it is quite clear that a case must be made out of the public inconvenience. It does not appear, even from Mr. Barret's affidavit, that there has been any public complaint of want of accommodation; but, on the other hand, it is clearly shewn by the affidavits of the defendants that no such complaint has ever been made. I can quite understand the existence of a case in which there being two competing lines, say from A to B, and one of them having a continuation from B to C, the Company having the continuation might so arrange the departure from B as seriously to interfere with the other and perhaps shorter line, and operate to the prejudice and inconvenience of the public, and to *force the traffic to B over a greater extent of line* at the sacrifice of cost or time, or both. Such a case would be under the Act, and this court would be justified in interfering in it. But in the present case it appears that there is abundance of accommodation on the Mid-

land Company's lines; and although it may be somewhat farther in point of distance, it does not appear that there is any extra cost or loss of time upon the whole. The most striking part of the case is, that those who might be supposed to be more immediately concerned in having the communication between Lancaster and Leeds so arranged as that the arrival and departure of the trains should correspond with the arrival and departure of the trains upon the Great Northern line, namely, the Great Northern Company, so far from making any complaint of unfair dealing on the part of the Midland Company, are perfectly satisfied with the arrangement existing, and are here to oppose, instead of supporting, this application. I think, therefore, that the rule must be discharged; and, as it has been applied for on wholly insufficient grounds, it must be discharged with costs.

J. CRESSWELL: I am entirely of the same opinion. There has been a *total failure by the applicant in making out anything like a want of reasonable accommodation.* It has been suggested that a passenger coming from Lancaster may wish to stop at Hitchin or somewhere short of London; but we have no affidavit of that kind before us. With reference to that point, I suppose it is intended to be urged that everybody has an equal right to the same accommodation. Supposing then, that a gentleman required, as Mr. Barrett appears to have done, a train from London at half-past nine which would take him to Leeds in time to meet a train to go forward, immediately, a person at Hitchin would have a similar right. He would have an equal right to say, "I want to go by the train that passes Hitchin at ten o'clock—but that is an express train, and does not stop at Hitchin." Why should not the gentleman at Hitchin have a right to travel as fast as the gentleman from London? That view of the case shews that we must consider what is reasonable with reference to the general traffic of the company. Now there is nothing in the affidavit of Mr. Barret to shew that there is any absence of all the accommodation which the nature of the traffic required between Leeds and Settle. The case, therefore, fails entirely; and I concur the more readily in discharging the rule with costs, because it occurred to me at the time the motion was made, that it was moved upon very slender grounds.

J. WILLIAMS: I am entirely of the same opinion. I think it would be quite unreasonable if one were to compel these two companies to make arrangements with respect to their passenger traffic, unless it were made out to our satisfaction that *the public convenience requires it.* The court granted the rule with great reluctance, and attention was called to the weakness of the affidavit, so that if it could have been strengthened it would have been, before the rule was drawn up. It appears, however, that the applicant has declined to make an affidavit, even of his belief that the public convenience required the arrangement which he asks. Looking at the affidavits on the other side, it appears to me that it would have been contrary to good sense if we came to

the conclusion, on a mere surmise, that this arrangement is required for the public convenience. *If the court had been satisfied that the public convenience did require the continuous train,* which is requested by this rule, and that the company would have the means of giving the public that accommodation, I for one certainly should pause before I discharged the rule. I think, for the reason already given, that we must discharge the rule with costs.

Rule discharged with costs.

NOVEMBER 28, 1856.

CATERHAM RAILWAY COMPANY v. THE LONDON AND BRIGHTON RAILWAY COMPANY, AND THE SOUTH-EASTERN RAILWAY COMPANY.

(26 LAW JOURNAL REPORTS (N.S.) C.P. 161; 1 C.B., N.S. 410.)

Not sufficient to shew inequality on one branch as compared with another. Covered platforms, if granted for one junction must be so for others.

Sir F. Kelly (Sergeant Willes was with him) moved, on behalf of the Caterham Railway Company, for a writ of injunction under the Railway and Canal Traffic Act, the 17 and 18 Vict. c. 31, enjoining the London, Brighton, and South Coast Railway Company and the South-Eastern Railway Company to afford to the Caterham Railway Company the same facilities as they afforded to the traffic on other branches of their respective lines, and to desist from giving any undue or unreasonable preference or advantage to or in favour of any other particular person or company, or any other particular description of traffic.

It appeared from the affidavits that the Caterham Railway Company was incorporated, in 1854, by the 17 and 18 Vict. c. lxviii., "An Act for making a railway from the London, Brighton, and South Coast Railway to Caterham, in the County of Surrey." The railway which commences at Godstone Road Station of the London, Brighton, and South Coast Railway, was opened on the 5th of August, 1856, for the conveyance of passengers, &c., from the Godstone Road Junction to Coulsdon, Warlingham, and Caterham, and a time-table was issued shewing the times of starting of the several trains running between London Bridge and Caterham, in conjunction with the trains of the Brighton and the South-Eastern Railway Companies.

The South-Eastern Railway Company are the proprietors of the main line between London and a point near New Cross. The London, Brighton, and South Coast Railway Company are the proprietors of the rest of the line to the Godstone Road or Caterham Junction. The distance between London and the Caterham Junction is thirteen miles, and between London and Caterham eighteen miles.

It was alleged that the times for starting were inconvenient,

and fares unreasonable. That the fares charged to the public travelling on the Caterham railway by the London, Brighton, and South Coast, and the South-Eastern Railway Companies were much greater than the fares charged by them to the public travelling on their branch lines to Epsom or to Wimbledon; and that the said two companies did not issue third-class return tickets to and from Caterham and London, as they did to and from Epsom and Wimbledon, thereby giving an unfair preference to the public travelling to and from Epsom and Wimbledon, and a disadvantage to the public travelling to and from Caterham. That a sufficient number of trains were not allowed to stop at the Caterham Junction, and that the times of stopping were inconvenient to the public; and lastly, that, although at every other junction on the lines a proper covered place was provided for the convenience of passengers waiting for trains, there was none provided at the Caterham Junction.

J. CRESSWELL: By the Act of Parliament, 17 and 18 Vict. c. 31, very extensive powers are conferred on this Court, powers which may be exercised for the benefit of the public, but which may also be exercised to the wrong and detriment of persons carrying on a great trade; and we ought therefore to be very cautious to ascertain that there is reasonable ground for believing that the Act has been infringed before we interfere. Four grounds of complaint have been made in this case. The first is of unequal rates charged by the Brighton and South Eastern Companies to persons travelling on their lines to the Caterham Branch as compared with the rates charged by them to persons travelling on their lines to other places, but *no inequality is complained of in the rates charged* for going to the *Caterham Junction as compared* with the rates charged *for other distances* on the same line, and it is not enough to shew an inequality as compared with the rates charged upon *another* line. The words of the 2nd Section are "no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsover, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatever." It cannot be said that because persons may travel for a less charge between Epsom and London than they can between Caterham and London, any undue or unreasonable preference is given to any particular person or company, or that they are subjected to any undue or unreasonable prejudice or disadvantage. All persons travelling from Caterham to London are charged the same. The second ground of complaint is, that a sufficient number of trains are not allowed to stop at the Caterham Junction, and that the times of stopping are inconvenient. As to this it is not shewn that there is any other station on the same line of a similar character, and to which the traffic is of the same description, and proportionate amount at

which greater facilities are given; and I think no sufficient case is made out for our interference on that ground. The third ground of complaint is, that these companies refuse to issue third-class return tickets to Caterham. But, by the time-bill referred to, it appears that third-class return tickets are not issued to any station on the line below Croydon. There will, therefore, be no rule on that ground. With respect to the fourth ground of complaint, viz. the absence of a convenient covered station at the Caterham Junction. I think the absence of such accommodation subjects passengers on the Caterham line to undue prejudice and inconvenience, and it appears that there are covered stations at all the other places on the line; as to that, therefore, the rule may go.

J. WILLIAMS: I am of the same opinion. As to the first point, I think no case of undue preference made out in favour of any particular person or company, because passengers are carried at a lower rate on other branches of the Brighton and South Eastern Companies' lines. *If the excess* of charge on the Caterham branch *was owing to a design* on the part of the other companies to exclude the Caterham Company from the benefits to be derived from the use of their lines, that would be a ground for an interference under the act. But *no such design is shewn here.* As to the second ground of complaint, I am not able to judge from the materials before us whether or not more trains are necessary for the convenience of the public; and whether the Brighton and South Eastern Companies can reasonably be required to stop their trains more frequently, or at other times at the Caterham Junction, must obviously depend upon the profit to be got by it, and we have not all the circumstances before us sufficient to enable us to come to a right conclusion on the matter. As to the third-class return tickets, there may be very good grounds for not issuing them to any stations beyond Croydon; and had the companies been in the habit of issuing them to other stations beyond, and refused to issue them to Caterham, there might have been some reason for the complaint. As to the complaint of want of proper accommodation at the Caterham Junction Station, I think there ought to be a rule as to that.

J. CROWDER.—I agree with my brother Cresswell and Williams, that upon the first three grounds of complaint, the rule ought to be refused. I think, when we find the same rates charged to every person travelling on the same portion of line, that it cannot be said any undue prejudice is imposed, and those words in the act appear to me to refer to persons and companies using the line between the same termini. With respect to the number of trains and the times of stopping, it is not shewn on the affidavits that the companies have been guilty of any impropriety. It is not shewn that the accommodation which the public have a right to expect is not supplied. If it were not that might be a good ground for our interference. As to the third class return tickets, none are issued for stations below Croydon, and there is no in-

convenience or hardship to be complained of on that ground. But with respect to the want of a covered station at the Caterham Junction, I think that is a reasonable accommodation to which the public are entitled, and that there ought to be a rule as to that.

J. WILLES.—I am of the same opinion. *I do not doubt the power of this court to interfere* on any one of the grounds complained of, *if any good reason* for it were shewn, but I think we ought not to interfere without being satisfied that there are good reasons for so doing, and the latter part of the second section of the Act shews that the object of our interference should be to insure the convenience and accommodation of the public. The vague statement in these affidavits are not sufficient to shew inconvenience or want of reasonable accommodation to the public.

Rule accordingly.—The rule was not drawn up. The Brighton and South Eastern Companies being willing to provide a covered station at the Caterham Junction, according to the intimation given by this court that it was a reasonable accommodation.

FEBRUARY 26th, 1857.—WHITE v. THE GREAT WESTERN RAILWAY COMPANY.

(LAW JOURNAL, VOL. 26., (N.S.) p. 158).

When carriers limit their liability they must be sued, not as common carriers, but on the special contract.

J. CRESSWELL delivered the judgment of the court. In this case, which was argued before the LORD CHIEF JUSTICE, my brother CROWDER, and myself, it seemed to the court, that the question is one of mere special pleading. The declaration alleged that the plaintiffs were *common carriers*, and received the goods in question to be carried by them "as such *common carriers*," for hire and reward. The plea traversed the averment that the defendants received the goods as common carriers. It appeared in evidence that the defendants did not receive any goods to be carried by them, unless the consignor signed a paper containing various conditions, subject to which they were to be carried. It was contended that the conditions were unreasonable, and therefore void, by operation of the statute, 17 and 18 Vict., c. 31., and that the contract must be treated as unconditional. The learned Judge thought that the conditions were reasonable, that the contract was *special*, and that the defendants did not receive the goods to be carried by them *as common* carriers, and directed a non-suit. The court is of opinion that he was right. The learned Judge referred to the cases of Latham v. Rutley, R. and M. 13. Walker *v.* the York and North Midland Railway Company, 23 Law J., Q.B. 73, as authorities to shew that where carriers by contract limit their liability they must be sued and treated, not as common carriers, but as special carriers for hire upon the terms

of their special contracts, if those are found to be "just and reasonable." The court cannot distinguish either of those cases from the present, and therefore think that the rule for setting aside the nonsuit must be discharged. Crisp *v.* the York, Newcastle, and Berwick Railway Company (14 Com. B. Rep. 527), is another authority to the same effect.

Rule discharged.

ACTS OF PARLIAMENT.

17 AND 18 VICT. CAP. XXXI.

AN ACT FOR BETTER REGULATION OF THE TRAFFIC ON RAILWAYS AND CANALS. [10*th July*, 1854.]

WHEREAS it is expedient to make better Provision for regulating the Traffic on Railways and Canals: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1.—"*Board of Trade.*"—In the Construction of this Act "the Board of Trade" shall mean the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations:

Traffic.—The Word "Traffic" shall include not only Passengers, and their Luggage, and Goods, Animals, and other Things conveyed by any Railway Company or Canal Company, or Railway and Canal Company, but also Carriages, Waggons, Trucks, Boats, and Vehicles of every Description adapted for running or passing on the Railway or Canal of any such Company:

Railway.—The Word "Railway" shall include every Station of or belonging to such Railway used for the Purposes of public Traffic: And

Canal.—The Word "Canal" shall include any Navigation whereon Tolls are levied by Authority of Parliament, and also the Wharves and Landing Places of and belonging to such Canal or Navigation, and used for the Purposes of public Traffic:

"*Company.*"—The Expression "Railway Company," "Canal Company," or "Railway and Canal Company," shall include any Person being the Owner or Lessee of or any Contractor working any Railway or Canal or Navigation constructed or carried on under the Powers of any Act of Parliament.

Stations.—A Station, Terminus, or Wharf shall be deemed to be near another Station, Terminus, or Wharf when the Distance between such Stations, Termini, or Wharves shall not exceed One Mile, such Stations not being situate within Five Miles, from *St. Paul's* Church, in *London.*

Duty of Railway Companies to make Arrangements for receiving and forwarding Traffic, without unreasonable Delay, and without Partiality.—

II. Every Railway Company, Canal Company, and Railway and Canal Company, shall, according to their respective Powers, afford all reasonable Facilities for the receiving and forwarding and delivering of Traffic upon and from the several Railways and Canals belonging to or worked by such Companies respectively, and for the Return of Carriages, Trucks, Boats, and other Vehicles, and no such Company shall make or give any undue or unreasonable Preference or Advantage to or in favour of any particular Person or Company, or any particular Description of Traffic, in any respect whatsoever, nor shall any such Company subject any particular Person or Company, or any particular Description of Traffic, to any undue or unreasonable Prejudice or Disadvantage in any respect whatsoever; and every Railway Company and Canal Company and Railway and Canal Company having or working Railways or Canals which form Part of a continuous Line of Railways or Canal or Railway and Canal Communication, or which have the Terminus, Station, or Wharf of the one near the Terminus Station, or Wharf of the other, shall afford all due and reasonable Facilities for receiving and forwarding all the traffic arriving by one of such Railways or Canals by the other, without any unreasonable Delay, and without any such Preference or Advantage, or Prejudice or Disadvantage, as aforesaid, and so that no Obstruction may be offered to the Public desirous of using such Railways or Canals or Railways and Canals as a continuous Line of Communication, and so that all reasonable Accommodation may, by means of the Railways and Canals of the several Companies, be at all Times afforded to the Public in that Behalf.

Parties complaining that reasonable Facilities for forwarding Traffic, &c., are withheld, may apply by Motion or Summons to the Superior Courts.—

III. It shall be lawful for any Company or Person complaining against any such Companies or Company of anything done or of any Omission made in Violation or Contravention of this Act, to apply in a summary Way, by Motion or Summons, in *England* to Her Majesty's Court of Common Pleas at *Westminster*, or in *Ireland* to any of Her Majesty's Superior Courts in *Dublin*, or in *Scotland* to the Court of Session in *Scotland*, as the Case may be, or to any Judge of any such Court; and, upon the Certificate to Her Majesty's Attorney General in *England* or *Ireland*, or Her Majesty's Lord Advocate in *Scotland*, or of the Board of Trade, alleging any such Violation or Contravention of this Act by any such Companies or Company, it shall also be lawful for the said Attorney General or Lord Advocate to apply in like Manner to any such Court or Judge, and in either of such Cases it shall be lawful for such Court or Judge to hear and determine the Matter of such Complaint; and for that Purpose, if such Court or Judge shall

think fit, to direct and prosecute, in such Mode and by such Engineers, Barristers, or other Persons as they shall think proper, all such Inquiries as may be deemed necessary to enable such Court or Judge to form a just Judgment on the Matter of such Complaint; and if it be made to appear to such Court or Judge on such Hearing, or on the Report of any such person, that anything has been done or Omission made, in Violation or Contravention of this Act, by such Company or Companies, it shall be lawful for such Court or Judge to issue a Writ of Injunction or Interdict, restraining such Company or Companies from further continuing such Violation or Contravention of this Act, and enjoining Obedience to the same; and in case of Disobedience of any such Writ of Injunction or Interdict it shall be lawful for such Court or Judge to order that a Writ or Writs of Attachment, or any other process of such Court incident or applicable to Writs of Injunction or Interdict, shall issue against any one or more of the directors of any Company, or against any owner, lessee, contractor, or other person failing to obey such writ of injunction or interdict; and such Court or Judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such Companies of such sum of money as such Court or Judge shall determine, not exceeding for each Company the Sum of Two Hundred Pounds for every Day, after a Day to be named in the Order, that such Company or Companies shall fail to obey such Injunction or Interdict; and such Monies shall be payable as the Court or Judge may direct, either to the Party complaining or into Court to abide the ultimate Decision of the Court, or to Her Majesty, and Payment thereof may, without Prejudice to any other Mode of recovering the same, be enforced by Attachment or Order in the Nature of a Writ of Execution, in like Manner as if the same had been recovered by Decree or Judgment in any Superior Court at *Westminster* or *Dublin*, in *England* or *Ireland*, and in *Scotland*, by such Diligence as is competent on an extracted Decree of the Court of Session; and in any such Proceeding as aforesaid such Court or Judge may order and determine that all or any Costs thereof or thereon incurred shall and may be paid by or to the One Party or the other, as such Court or Judge shall think fit; and it shall be lawful for any such Engineer, Barrister, or other Person, if directed so to do by such Court or Judge, to receive Evidence on Oath relating to the Matter of any such Inquiry, and to administer such Oath.

Judges may make such Regulations as may be necessary for proceedings under this Act.—

IV. It shall be lawful for the said Court of Common Pleas at *Westminster*, or any Three of the Judges thereof, of whom the Chief Justice shall be One, and it shall be lawful for the said Courts in *Dublin*, or any Nine of the Judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lords Chief Justice

of the Queen's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall be Five, from Time to Time to make all such General Rules and Orders as to the Forms of Proceedings and Process, and all other Matters and Things touching the Practice and otherwise in carrying this Act into execution before such Courts and Judges, as they may think fit, in *England* or *Ireland*, and in *Scotland* it shall be lawful for the Court of Session to make such Acts of Sederunt for the like Purpose as they shall think fit.

Court or Judge may order a hearing—

V. Upon the application of any Party aggrieved by the Order made upon any such Motion or Summons as aforesaid, it shall be lawful for the Court or Judge by whom such Order was made, to direct, if they think fit so to do, such Motion or Application on Summons to be reheard before such Court or Judge, and upon such Rehearing to rescind or vary such Order.

Mode of Proceeding under this Act.—

VI. No Proceeding shall be taken for any Violation or Contravention of the above Enactments, except in the Manner herein provided; but nothing herein contained shall take or diminish any Rights, Remedies, or Privileges of any Person or Company against any Canal or Railway and Canal Company under the existing Law.

Company to be liable for Neglect or Default in the Carriage of Goods, notwithstanding Notice to the contrary.—Company not to be liable beyond a limited Amount in certain Cases, unless the Value declared and extra Payment made.—Proof of Value to be on the Person claiming Compensation. No special Contract to be binding unless signed.—Saving of Carriers Act 11 *G.* 4. *&* 1 *W.* 4. *c.* 68.—

VII. Every such Company as aforesaid shall be liable for the Loss of or for any Injury done to any Horses, Cattle, or other Animals, or to any Articles, Goods, or Things, in the receiving, forwarding, or delivering thereof, occasioned by the Neglect or Default of such Company or its servants, notwithstanding any Notice, Condition, or Declaration made and given by such Company contrary thereto, or in anywise limiting such Liability; every such Notice, Condition, or Declaration being hereby declared to be null and void; Provided always that nothing herein contained shall be construed to prevent the said Companies from making such Conditions with respect to the receiving, forwarding, and delivering of any of the said Animals, Articles, Goods, or Things, as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried to be just and reasonable: Provided always, that no greater Damages shall be recovered for the Loss of or for any Injury done to any of such Animals, beyond the Sums herein-after mentioned; (that is to say,) for any Horse Fifty Pounds; for any Neat Cattle, *per* Head, Fifteen Pounds;

for any Sheep or Pigs, *per* Head, Two Pounds; unless the Person sending or delivering the same to such Company shall, at the Time of such Delivery, have declared them to be respectively of higher Value than as above mentioned; in which Case it shall be lawful for such Company to demand and receive by way of Compensation for the increased Risk and Care thereby occasioned, a reasonable Per-centage upon the Excess of the Value so declared above the respective Sums so limited as aforesaid, and which shall be paid in addition to the ordinary Rate of Charge; and such Per-centage or increased Rate of Charge shall be notified in the Manner prescribed in the Statute Eleventh *George* Fourth and First *William* Fourth, Chapter Sixty-eight, and shall be binding upon such Company in the Manner therein mentioned: Provided also, that the Proof of the Value of such Animals, Articles, Goods, and Things, and the Amount of the Injury done thereto, shall in all Cases lie upon the Person claiming Compensation for such Loss or Injury: Provided also, that no special Contract between such Company and any other Parties, respecting the receiving, forwarding, or delivering of any Animals, Articles, Goods, or Things as aforesaid shall be binding upon or affect any such Party unless the same be signed by him or by the Person delivering such Animals, Articles, Goods, or Things respectively for Carriage: Provided also, that nothing herein contained shall alter or affect the Rights, Privileges, or Liabilities of any such Company under the said Act of the Eleventh *George* Fourth and First *William* Fourth, Chapter Sixty-eight, with respect to Articles of the Descriptions mentioned in the said Act.

Short Title.—

VIII. This Act may be cited for all Purposes as "The Railway and Canal Traffic Act, 1854."

1 WILLIAM IV CAP. LXVIII.

AN ACT FOR THE MORE EFFECTUAL PROTECTION OF MAIL CONTRACTORS, STAGE COACH PROPRIETORS, AND OTHER COMMON CARRIERS FOR HIRE, AGAINST THE LOSS OF OR INJURY TO PARCELS OR PACKAGES DELIVERED TO THEM FOR CONVEYANCE OR CUSTODY, THE VALUE AND CONTENTS OF WHICH SHALL NOT BE DECLARED TO THEM BY THE OWNERS THEREOF. [23RD JULY 1830.]

Mail Contractors, Coach Proprietors, and Carriers not to be liable for Loss of certain Goods above the Value of 10*l.* *unless delivered as such, and increased Charge accepted.*

WHEREAS by reason of the frequent Practice of Bankers and others of sending by the public Mails, Stage Coaches Waggons, Vans, and other public Conveyances by Land for Hire, Parcels and Packages containing Money, Bills, Notes, Jewellery, and other Articles of great Value in small Compass, much valuable

Property is rendered liable to Depredation, and the Responsibility of Mail Contractors, Stage Coach Proprietors, and Common Carriers for Hire is greatly increassd: And whereas through the frequent Omission by Persons sending such Parcels and Packages to notify the Value and Nature of the Contents thereof, so as to enable such Mail Contractors, Stage Coach Proprietors, and other Common Carriers, by due Diligence, to protect themselves against Losses arising from their legal Responsibility and the Difficulty of fixing Parties with Knowledge of Notices published by such Mail Contractors, Stage Coach Proprietors, and other Common Carriers, with the Intent to limit such Responsibility they have become exposed to great and unavoidable Risks, and have thereby sustained heavy Losses: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act no Mail Contractor, Stage Coach Proprietor, or other Common Carrier by Land for Hire shall be liable for the Loss of or Injury to any Article or Articles or Property of the Descriptions following; (that is to say,) Gold or Silver Coin of this Realm or of any Foreign State, or any Gold or Silver in a manufactured or unmanufactured State, or any Precious Stones, Jewellery, Watches, Clocks, or Time-pieces of any Description, Trinkets, Bills, Notes of the Governor and Company of the Banks of *England, Scotland,* and *Ireland* respectively, or of any other Bank in *Great Britain* or *Ireland,* Orders, Notes, or Securities for Payment of Money, *English* or Foreign, Stamps, Maps, Writings, Title Deeds, Paintings, Engravings, Pictures, Gold or Silver Plate or plated Articles, Glass, China, Silks in a manufactured or unmanufactured State, and whether wrought up or not wrought up with other Materials, Furs, or Lace, or any of them,* contained in any Parcel or Package which shall have been delivered, either to be carried for Hire or to accompany the Person of any Passenger in any Mail or Stage Coach or other public Conveyance, when the Value of such Article or Articles or Property aforesaid contained in such Parcel or Package shall exceed the Sum of Ten Pounds, unless at the Time of the Delivery thereof at the Office, Warehouse, or Receiving House of such

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* The following description of articles do not come within the terms of the Act.—Wool and felt hats, *Mayhew* v. *Nelson,* 6 C. & P. 58; an imperfect bill of exchange, *Stoessyn* v. *South-Eastern,* R.C. 23 Law J. R. 293 Q.B.; nor fusee boxes, *Bernsetin* v. *Baxendale,* 33 Law, T. 106, but pictures are included. 8 C. and P. 361, and a truss of silk, *Butt* v. *Great Western.* 20 Law J. C.P. 241. A Bankrupt's Certificate, *Syms* v. *Chaplin,* 5 Ad. and Ell 634. fur hats Nayhew v. Nelson, 6 C. and P. 58,; also bracelets, shirt pins, gilt rings, brooches, and ornamental portomonnaies are trinkets within the meaning of the Act.—Articles, the main object of which is ornament, though of some use are trinkets. Silk dresses, silk braid, and silk hose are within the meaning of the Act; so are glass smelling bottles, *Bernstetetn* v. *Baxendale,* 33 Law T. 106.

Mail Contractor, Stage Coach Proprietor, or other Common Carrier, or to his, her, or their Book-keeper, Coachman, or other Servant, for the Purpose of being carried or of accompanying the Person of any Passenger as aforesaid, the Value and Nature of such Article or Articles or Property shall have been declared by the Person or Persons sending or delivering the same, and such increased Charge as herein-after mentioned, or an Engagement to pay the same, be accepted by the Person receiving such Parcel or Package.

When any Parcel shall be so delivered an increased Rate of Charge may be demanded.—Notice of the same to be affixed in Offices or Warehouses.—

II. And be it further enacted, That when any Parcel or Package containing any of the Articles above specified shall be so delivered, and its Value and Contents declared as aforesaid, and such Value shall exceed the Sum of Ten Pounds, it shall be lawful for such Mail Contractors, Stage Coach Proprietors, and other Common Carriers to demand and receive an increased Rate of Charge, to be notified by some Notice affixed in legible Characters in some public and conspicuous Part of the Office, Warehouse, or other Receiving House where such Parcels or Packages are received by them for the Purpose of Conveyance, stating the increased Rates of Charge required to be paid over and above the ordinary Rate of Carriage as a Compensation for the greater Risk and Care to be taken for the safe Conveyance of such valuable Articles; and all Persons sending or delivering Parcels or Packages containing such valuable Articles as aforesaid at Such Office shall be bound by such Notice, without further Proof of the same having come to their Knowledge.

Carriers to give Receipts, acknowledging increased Rate.—In case of Neglect to give Receipt or affix Notice, the Party not to be entitled to Benefit of this Act.—

III.—Provided always, and be it further enacted, That when the Value shall have been so declared, and the increased Rate of Charge paid, or an Engagement to pay the same shall have been accepted as herein-before mentioned, the Person receiving such increased Rate of Charge or accepting such Agreement shall, if thereto required, sign a Receipt for the Package or Parcel, acknowledging the same to have been insured, which Receipt shall not be liable to any Stamp Duty; aud if such Receipt shall not be given when required, or such Notice as aforesaid shall not have been affixed, the Mail Contractor, Stage Coach Proprietor, or other Common Carrier as aforesaid shall not have or be entitled to any Benefit or Advantage under this Act, but shall be liable and responsible as at the Common Law, and be liable to refund the increased Rate of Charge.

Publication of Notices not to limit the Liability of Proprietors, &c. in respect of any other Goods conveyed.—

IV. Provided always, and be it enacted, That from and after

the First Day of *September* now next ensuing no public Notice or Declaration heretofore made or hereafter to be made shall be deemed or construed to limit or in anywise affect the Liability at Common Law of any such Mail Contractors, Stage Coach Proprietors, or other public Common Carriers as aforesaid for or in respect of any Articles or Goods to be carried and conveyed by them; but that all and every such Mail Contractors, Stage Coach Proprietors, and other Common Carriers as aforesaid shall from and after the said First Day of *September* be liable as at the Common Law, to answer for the Loss of or any Injury to any Articles and Goods in respect whereof they may not be entitled to the Benefit of this Act, any public Notice or Declaration by them made and given contrary thereto, or in anywise limiting such Liability, notwithstanding.

Every Office used to be deemed a Receiving House; and any One Coach Proprietor or Carrier shall be liable to be sued.—

V. And be it further enacted, That for the Purposes of this Act every Office, Warehouse, or Receiving House which shall be used or appointed by any Mail Contractor or Stage Coach Proprietor or other such Common Carrier as aforesaid for the receiving of Parcels to be conveyed as aforesaid, shall be deemed and taken to be the Receiving House, Warehouse, or Office of such Mail Contractor, Stage Coach Proprietor, or other Common Carrier; and that any One or more of such Mail Contractors, Stage Coach Proprietors, or Common Carrier shall be liable to be sued by his, her, or their Name or Names only; and that no Action or Suit commenced to recover Damages for Loss or Injury to any Parcel, Package, or Person shall abate for the Want of joining any Co-proprietor or Co-partner in such Mail, Stage Coach, or other public Conveyance by Land for Hire as aforesaid.

Not to affect Contracts.—

VI. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to annul or in anywise affect any special Contract between such Mail Contractor, Stage Coach Proprietor, or Common Carrier, and any other Parties, for the Conveyance of Goods and Merchandises.

Parties entitled to Damages for Loss may also recover back extra Charges.—

VII.—Provided also, and be it further enacted, "That where any Parcel or Package shall have been delivered at any such Office and the Value and Contents declared as aforesaid, and the increased Rate of Charges been paid, and such Parcels or Packages shall have been lost or damaged, the Party entitled to recover Damages in respect of such Loss or Damage shall also be entitled to recover back such increased Charges so paid as aforesaid, in addition to the Value of such Parcel or Package.

Nothing herein to protect felonious Acts.—

VIII.—Provided also, and be it further enacted, That nothing in this Act shall be deemed to protect any Mail Contractor, Stage Coach Proprietor, or other Common Carrier for Hire from Liability to answer for Loss or Injury to any Goods or Articles whatsoever arising from the felonious Acts of any Coachman, Guard, Book-keeper, Porter, or other Servant in his or their Employ, nor to protect any such Coachman, Guard, Book-keeper, or other Servant from Liability for any Loss or Injury occasioned by his or their own personal Neglect or Misconduct.

Coach Proprietors and Carriers liable only to such Damages as are proved.—

IX. Provided also, and be it further enacted, That such Mail Contractors, Stage Coach Proprietors, or other Common Carriers for Hire shall not be concluded as to the Value of any such Parcel or Package by the Value so declared as aforesaid, but that he or they shall in all Cases be entitled to require, from the Party suing in respect of any Loss or Injury, Proof of the actual Value of the Contents by the ordinary legal Evidence, and that the Mail Contractors, Stage Coach Proprietors, or other Common Carriers as aforesaid shall be liable to such Damages only as shall be so proved as aforesaid, not exceeding the declared Value, together with the increased Charges as before mentioned.

Money may be paid into Court in all Actions for Loss of Goods.—

X. And be it further enacted, That in all actions to be brought against any such Mail Contractor, Stage Coach Proprietor, or other Common Carrier as aforesaid, for the Loss of or Injury to any Goods delivered to be carried, whether the value of such Goods shall have been declared or not, it shall be lawful for the Defendant or Defendants to pay Money into Court in the same Manner and with the same Effect as Money may be paid into Court in any other Action.

Public Act.—

XI. And be it further enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices, and others, without being specially pleaded.

8 AND 9 VICT. CAP. XLII

AN ACT TO ENABLE CANAL COMPANIES TO BECOME CARRIERS OF GOODS UPON THEIR CANALS. [21*st July*, 1845.]

SEC. I.—*Enables Canal Companies to carry Goods on their Canals, or Canals communicating therewith.*—

II.—*Company to be subject to the Bye Laws of any other Company upon whose Canal they may act as Carriers, as to the use of steam power; such Bye Laws to be equally applicable to all.*

III.—*Canal Companies may provide Boats and Power for hauling and tracking Vessels of other Persons.*—

Tolls, &c., to be charged equally to all Persons.—

IV. Provided always, and be it enacted, That all Charges to be made by any such Company for the Carriage of any such Goods, Wares, Merchandize, Articles, or Things, or for the Use of their Boats and other Vessels, or for the Supply of Haulage, Trackage, or other Power, shall be at all Times charged equally to all Persons, and after the same Rate, whether *per* Mile, or *per* Ton *per* Mile, or otherwise, in respect of all Goods, Wares, Merchandize, Articles, and Things of a like Description, and conveyed or propelled in a like Boat or Vessel at the same Rate of Speed, and passing along the same Portion of any such Canal or Navigation under the like Circumstances, and no Reduction or Advance in any of such Charges shall be made, either directly or indirectly, in favour of or against any particular Company or Person passing along or using, or sending Goods, Wares, Merchandize, Articles, or Things along the same Portion of any such Canal or Navigation under the like Circumstances.

V.—*Company may sue and be sued as Carriers, and may prefer Indictments.*—

Provisions in force relating to Common Carriers to apply to such Companies.—

VI. Provided always, and be it enacted, That nothing herein contained shall in any Case extend to charge or make liable any such Company further or in any other Case than where, according to the Laws of this Realm for the Time being, Common Carriers would be liable; nor shall any thing herein contained extend to deprive such Company of any Protection or Privilege which either now or at any Time hereafter Common Carriers have or may be entitled to, but such Company shall from Time to Time and at all Times have and be entitled to the Benefit of every such Protection and Privilege.

VII.—*Companies empowered to contract with other Canal Companies.*—

VIII.—*Canal Companies empowered to lease their Tolls.*—

IX.—*Lessees to be deemed Collectors.*—

X.—*Lessee making default to be removed.*—

XI.—*Power to re-let Tolls.*—

XII.—*Act not to apply to Canals vested in Shareholders, until approved of at a Meeting, or in other Cases by Proprietors, and Notices inserted in Gazettes, &c.*—

Act not to exempt Canal Companies from any general Act.—

XIII. And be it enacted, That nothing herein contained shall be construed to exempt any Canal or Navigation Company who shall adopt the Powers of this Act from the Operation of any general Act regulating the Manner of charging Tolls and other Charges upon Canals or Navigations in respect of Passengers, Goods, Animals, Articles, and Things of a like Description, which may be passed in the course of any future Session of Parliament.

Act.—

XIV.—Act may be amended or repealed in this present Session.

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8 AND 9 VIC. CAP. XXVIII.

AN ACT TO EMPOWER CANAL COMPANIES AND THE COMMISSIONERS OF NAVIGABLE RIVERS TO VARY THEIR TOLLS, RATES, AND CHARGES ON DIFFERENT PARTS OF THEIR NAVIGATIONS. [30*th June*, 1845.]

Canal Companies authorised to vary their Tolls or Rates on different Portions of their Canals—and also from Time to Time, to reduce, and again advance their Tolls or Rates.

WHEREAS by divers Acts of Parliament various Canal Companies and the Commissioners or Trustees of several Navigable Rivers have been authorized and empowered to levy and receive certain Tolls, Rates, and Charges for the Use of their respective Canals and Navigations, which Tolls, Rates, and Charges are for the most part required to be levied at one uniform Rate *per* Ton or *per* Mile throughout the entire Length of the said Navigations and Rivers respectively, without regard to any Difference of Circumstances which may exist in reference thereto: And whereas by an Act of Parliament passed in this present Session, called "The Railways Clauses Consolidation Act, 1845," Powers have been given to Railway Companies to vary the Tolls, Rates, and Charges upon Railways, so as to accommodate them to the Circumstances of the Traffic thereon: And whereas greater Competition for the public Advantage would be obtained if Canal Companies and the Commissioners or Trustees of Navigable Rivers which have already been or may hereafter be from Time to Time incorporated or established, or which are regulated under the Authority of Parliament, were to have the like Powers granted to them in respect of their several Canals and Navigations and other Works connected therewith; but such beneficial Purposes cannot be effected without the Authority of Parliament: Be it therefore

enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, and subject to the Provisions and Limitations herein contained, it shall be lawful for the Company of Proprietors of any Canal, or for the Undertakers, Commissioners, or Trustees of any Navigation or navigable River, already or hereafter to be established or incorporated or which is regulated under the Authority of Parliament, or for their respective Lessees, Committees, Directors, or Managers, or their Superintendents, or other Agents by them severally authorized, in such Manner as may be required by their respective Acts of Incorporation or for regulating such Canals or Navigations, from Time to Time to alter or vary the Tolls, Rates, and Duties granted to them, or by them respectively authorized to be levied and received for the Use of their several Canals or Navigations, or any Branches therefrom, or any Railways or Tramways connected therewith, and made under the Authority of such Canal or Navigation Acts, respectively, either upon the whole or upon or for any particular Portion or Portions of such Canals, Navigations, Branches, Railways, or Tramways, according to local Circumstances, or the Quantity of Traffic or otherwise, as they shall think fit, and also from Time to Time to lower or reduce, and again to raise or advance, such Tolls, Rates, and Duties, and also any Tolls or Charges by them respectively authorized to be levied and received for any Haulage, Trackage, or other Power supplied by them, either upon the whole or upon any particular Portion or Portions of their said several Canals, Navigations, Branches, Railways, and Tramways, as to such Companies, Commissioners, Trustees, or Lessees, or their Committees, Directors, Managers, or Superintendents respectively, shall seem fit, anything in the several Acts of Incorporation, or for regulating any such Canals or Navigations, contained to the contrary notwithstanding: Provided always, that in no Case shall the Tolls, Rates, Duties, and Charges to be at any Time levied or made by any such Companies, Commissioners, Trustees, or Lessees, for the Use of any such Canals, Navigations, Branches, Railways, or Tramways, or for the Supply of any such Haulage, Trackage, or other Power, exceed the Amount which they are by their said several Acts respectively authorized to levy or receive.

Tolls to be charged equally to all Persons under the like circumstances.

II. Provided always, and be it enacted, That all Tolls, Rates, and Duties for the Use of any such Canals, Navigations, Branches, Railways, or Tramways shall be at all Times charged equally to all Persons, and after the same Rate, whether *per* Mile, or *per* Ton *per* Mile, or otherwise, in respect of all Boats, Barges, and other vessels of a like Description passing along or using the same Portion of the said Canal, Navigation, Branches, Railways, or

Tramways respectively, and upon all Goods, Animals, Articles, and Things of a like Description, and conveyed or propelled in a like Boat, Barge, or other Vessel passing along or using the same Portion of the said Canal, Navigation, Branches, Railways, or Tramways, under the like Circumstances; and that all Tolls and Charges for Haulage or Trackage or other Power, to be supplied by any such Company, Commissioners, Trustees, or Lessees, shall be at all Times charged equally to all Persons, and after the same Rate, whether *per* Mile, or *per* Ton *per* Mile, or otherwise, in respect of all Goods, Animals, Articles, and Things of a like Description, and conveyed in a like Boat or Vessel, drawn or propelled by a like Power, and passing along or using the same Portion of any such Canal, Navigation, Branches, Railways, or Tramways, under the like Circumstances; and no Reduction or Advance in any Tolls or Charges for the Use of any such Canal, Navigation, Branches, Railways, or Tramways, or for the Supply of any Haulage, Trackage, or other Power by the said Companies, Commissioners, Trustees, or Lessees, shall be made, either directly or indirectly, in favour of or against any particular Company or Person passing along or using the same Portion of such Canal, Navigation, Branches, Railways, or Tramways.

Act not to apply to existing Companies until a Meeting of Shareholders have determined thereupon, nor in other Cases until approved by Trustees or Proprietors, and Notices thereof duly published.

III. Provided always, and be it enacted, That this Act shall not apply to any Canal or Navigation the Property wherein is vested in Shareholders until a Meeting of the Shareholders thereof shall have been duly convened, in such Manner as Meetings are by their respective Acts of Incorporation or Settlement required to be called, or are usually called, and it shall have been determined by a Majority of Two Thirds of the Votes of the Shareholders in such Meeting asssembled, either in Person or by Proxy (where by such Acts of Incorporation or Settlement voting by Proxy is allowed), to adopt the Powers hereby granted, and where such Navigations are vested in Commissioners or Trustees, without any Body of Shareholders or Proprietors, until a Special Meeting of such Commissioners or Trustees shall have been duly convened in such Manner as Special Meetings are by the respective Acts for regulating such Navigations required to be called, or are usually called, and it shall have been determined by a Majority of such Commissioners or Trustees in such Meeting assembled to adopt the Powers by this Act granted, or to any Canal or Navigation the Property wherein is vested in one or more Owner or Owners, Proprietor or Proprietors, unless the Owner or Owners, Proprietor or Proprietors thereof shall determine to adopt the Powers and Provisions hereby granted, nor in either Case until public Notice of such Determination and Intention shall

have been inserted in the *London Gazette* in respect of Canals or Navigations in *England* or *Wales*, in the *Edinburgh Gazette* in respect of Canals or Navigations in *Scotland*, and in the *Dublin Gazette* in respect of Canals or Navigations in *Ireland*, and in some Newspaper circulating in the County or Counties wherein such Canal or Navigation, or some Part thereof, shall pass, One Month at the least previously to the Exercise of such Powers, whereupon, or immediately after the Expiration of such Notice, every such Company, and all such Commissioners, Trustees, or Lessees, Owners and Proprietors, or their respective Committees, Directors, or Managers, or their Agents by them duly authorized in manner aforesaid, may from Time to Time put in force and exercise the said Powers or any of them in the Manner by this Act authorized.

Saving Rights specifically reserved to Canal Companies and others by existing Acts of Parliament.

IV. Provided always, and be it enacted, That nothing in this Act contained shall be deemed or construed to deprive any Canal or Navigation Company, or the Commissioners, Trustees, Undertakers, or Proprietors of any Canal, River, or Navigation, or the Owners, Lessees, or Occupiers of any Lands, Collieries, Quarries, or other Hereditaments adjoining or near to any of such Canals or Navigations, or the Overseers or Surveyors of the Roads of any Parish, Township, or Hamlet through which any such Canal or Navigation may pass, of any Powers, Rights, Privileges, Exemptions, or Advantages specifically and expressly secured to them by any existing Act of Parliament: Provided also, that where by any Canal or Navigation Act or Acts now passed the Tolls, Rates, or Duties (whether Tolls *per* Mile or Tolls in gross) upon any Description of Goods, Animals, Articles, or Things, or upon any Boats, Barges, or other Vessels which shall be navigated, carried, or conveyed along any Canal or Navigation, or any portion thereof, and which shall pass into, out of, or along any such Canal or Navigation, or any Portion thereof, from, into, or along any other Canal or Navigation, Canals or Navigations, adjoining or communicating therewith, or any Portion thereof, or from or to the Junction or Junctions with any such adjoining or communicating Canal or Navigation, Canals or Navigations, are or shall be specially fixed, determined, or limited, either absolutely, or with reference to the Tolls, Rates, or Duties to be levied or received from Time to Time on Goods, Animals, Articles, or Things, Boats, Barges, or other Vessels passing into, out of, or along such Canal or Navigation, or any Portion or Portions thereof respectively, from, into, or along any other adjoining or communicating Canal or Navigation, Canals or Navigations, or from or to the Junction or Junctions with such other adjoining or communicating Canal or Navigation, Canals or Navigations; or where in any such Act or Acts any special

Enactment or Provision shall have been inserted for securing a rateable Reduction or Advance of the respective Tolls, Rates, or Duties to be levied or received from Time to Time on Goods, Animals, Articles, or Things, Boats, Barges, or other Vessels, or on Goods, Animals, Articles, or Things of the same Description, passing over, along, into, or from any Canal or Navigation, or several and distinct Portions of any Canal or Navigation, into or along Two or more adjoining or communicating Canals or Navigations, or from or to the respective Junctions of Two or more adjoining or communicating Canals or Navigations, no Alteration or Variation of the Tolls, Rates, and Duties so specially fixed, determined, or limited, or any or either of them, other than such Alterations or Variations as are respectively authorized to be made under the several Acts for regulating such Canals or Navigations, shall be made under the Authority of this Act without the previous Consent in writing of the Proprietors, Trustees, Undertakers, or Commissioners of the Canal or Navigation, or of all the several canals or Navigations, who are expressly mentioned in such special Enactments or Provisions, or of the Committee, Directors, or Managers of the Company, Trustees, Undertakers, or Commissioners, or respective Companies, Trustees, Undertakers, or Commissioners of such Canal or Navigation, Canals or Navigations, which Consents such Companies, Trustees, Undertakers, and Commissioners, or their respective Committees, Directors, or Managers, are hereby authorised to give, either under their Common Seals respectively, or under the Hand of their respective Clerks or Secretaries, although any such Companies, Trustees, or Undertakers so consenting may not have adopted the other Powers of this Act.

Canal Companies subject to a Limitation of Profits not to raise their Dues so as to exceed the Maximum of Profits.

V. Provided also, and be it enacted, That where in any Canal or Navigation Act there shall have been inserted any special Provision which shall be still in force and unrepealed, whereby the Amount of the annual Dividends, Interest, or Profits to be shared or divided amongst the Proprietors or Shareholders of such Canal or Navigation shall have been limited not to exceed a certain Per-centage or Amount, and the Maximum of such Per-centage or Amount shall have been attained at the Time of the passing of this Act, it shall not be lawful for the Company of Proprietors, Trustees, or Undertakers of any such Canal or Navigation to avail themselves of any of the Powers of this Act for the Purpose of raising or increasing the Tonnage Rates, Tolls, or Duties which on the First Day of *January* immediately before the passing of this Act were charged or levied upon any Boats, Barges, or other Vessels carried upon or passing along such Canal or Navigation, or any Part thereof.

Nothing herein to exempt any Canal, &c., from any general Act.—

VI. And be it enacted, That nothing herein contained shall be construed to exempt any Canal or Navigation Company who shall adopt the Powers of this Act from the Operation of any general Act regulating the Manner of charging Tolls and other Charges upon Canals and Navigation in respect of Passengers, Goods, Animals, Articles, and Things of a like Description, which may be passed in the course of any future Session of Parliament.

Act may be amended, &c.—

VII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

REGULÆ GENERALES.

IN THE COMMON PLEAS, AT WESTMINSTER.

As to the Forms of Proceedings and Process, made pursuant to the Statute 17 *and* 18 *Victoria, chapter* 31, *section* 4, *intituled "An Act for the better Regulation of the Traffic on Railways and Canals."*

1.—Every application made under this Act to the Court, shall be for a rule calling upon the Company or Companies complained of, to show cause why a writ of injunction should not issue against such Company or Companies, enjoining them to do, or to desist from doing the thing required to be done, or the thing the doing of which is complained of by the Company, or person making such application, and every application made under this Act to a Judge at Chambers shall be by summons calling upon the Company or Companies complained of to show cause in like manner, which summons shall be granted only upon affidavit, and upon a statement made to the Judge in like manner as upon an application to the Court for a rule to show cause.

2.—If, on the hearing of any such rule or summons, the Court or Judge shall think fit to direct, and prosecute inquiries into the matter thereof, under the third section of this Act, the order for that purpose shall be in the following terms, or to the like effect; the rule or summons being enlarged until such further day as the Court or Judge shall think fit, in order that in the mean time such enquiries may be made and reported on.

"IN THE COMMON PLEAS.

"In the matter of the complaint of A. B. [or of the Company] against the Company.—It is ordered, that C. D., Esquire, Engineer, [or as the case may be], do forthwith make such inquiries into the matter of this complaint as may be necessary to enable the Court [or the Honourable Mr. Justice] to determine the same, and do report thereon to the Court [or to the said Mr. Justice] on or before the day of next.

"Dated this day of , 185 ."

3. Office copies of all the affidavits filed by either party on the hearing of such rule or summons shall, at the expense of such party, be furnished to the person appointed to make such inquiries, within three days after the making of such order as aforesaid.

4. The parties shall be entitled to be again heard by the Court or Judge, upon the said report; but no fresh affidavits shall be allowed on such hearing, unless by leave of the Court or a Judge.

5. Every writ of injunction issued under this Act shall be in the following form, or to the like effect:—

"VICTORIA, &c.—To the Company, their agents and servants, and every of them greeting. Whereas, A. B. [or 'the Company'] hath lately complained before us in our Court of Common Pleas at Westminster, of a violation and contravention by you the said company of 'The Railway and Canal Traffic Act, 1854'; that is to say, in [state the Act or omission complained of.] And whereas upon the hearing of such complaint the same hath been found to be true. We do, therefore, strictly enjoin and command you, the said Company, and your agents and servants, and every one of you, that you, and every one of you, do from henceforth altogether absolutely desist from [state the matter for the injunction where an act done is complained of] [or 'that you and every one of you forthwith do' (state the matter for the injunction where an omission is complained of)] until our said Court shall make order to the contrary. Witness, Sir John Jervis, Knight, at Westminster, the day of in the year of our Lord ."

6.—If the Court or Judge shall think fit also to make an order, directing the payment of a sum of money by the company or companies complained of, such order shall be in the following form, or to the like effect:—

"IN THE COMMON PLEAS.

"In the matter of the complaint of against the Company.—It is ordered, that the said Company do pay the said , [or 'into Court, to abide the ultimate decision of the Court in the matter of the said complaint,' or 'to the use of Her Majesty,'] the sum of £ for every day after the day of instant, that the said Company shall fail to obey a certain writ of injunction dated this day, and issued against the said Company at the instance of the said

"Dated this day of 185 ."

7.—If such money be ordered to be paid into Court, to abide the ultimate decision of the Court, the same shall, upon the ultimate decision of the Court being made, be paid out of Court either to the party complaining, or to the use of Her Majesty, or to the Company by which the same was paid into Court, as the Court or Judge shall direct.

JOHN JERVIS.
W. H. MAULE.
C. CRESSWELL.
E. V. WILLIAMS.
R. B. CROWDER.

January 31, 1855.

FORM.

SPECIAL AGREEMENT FOR CONVEYANCE.

To the Great Western Railway Company, Paddington Station.

Receive from John Simmons, of , the undermentioned on the conditions stated on the other side:—To be sent to at the rate or charges below mentioned, which I agree to pay, or cause to be paid, on delivery of such goods to the consignee, or his order, in consideration of the nature and description of the same.

Description of packages or goods.
Price or rate of carriage.
Signature of the consignor.

The terms and conditions upon which the Great Western Railway Company execute and perform the duties of Carriers per mile, and upon which the Packages, Goods, and Articles mentioned, and received for conveyance, are contained in the following notice of the said Company (viz.):—

NOTICE.

The Great Western Railway Company do hereby give public notice—1st, That they will not be accountable for any article conveyed upon their Railway, unless it be entered and signed for, and received by them; nor will they be responsible for the loss of or injury to any articles of the descriptions following (that is to say)—gold or silver coin of this realm or of any foreign state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, notes of the Governor and Company of the Bank of England, Scotland, and Ireland, or of any foreign country, orders, notes, or securities for payment of money,

English or foreign stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials, furs or lace, or any of them, contained in any parcel or packages which shall have been delivered, either to be carried for hire, or to accompany the person of any passenger on their railway, when the value of such article or articles of property aforesaid contained in such parcel or package shall exceed the sum of £10. 2. That they will not carry, nor allow to be carried on their railway, unless by special agreement, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in their judgment may be of a dangerous nature; and if any person send by their railway any such goods without distinctly marking their nature on the outside of the packages containing the same, or otherwise give notice in writing to the book-keeper or other servant of the company with whom the same are so left, at the time of so sending, he will be liable by Act of Parliament to a penalty of £10, which will be strictly enforced, as will also the amount of damage sustained on any other goods by means of the aforesaid dangerous articles. 3. That they will not until further notice, undertake to carry upon their railway, unless by special agreement, any boiler, cylinder, bob, or single piece of machinery, or single piece of timber or stone, or any other single article, the weight of which shall exceed four tons. 4. That they will not be accountable for the loss of or for damage to any goods arising from fire, civil commotion, tempest or act of God; nor (unless the carriage for the same be paid as in the case of the ordinary traffic contained therein) for loss, detention, or damage of returned wrappers, boxes, or returned empties of any description; nor for any goods put into returned wrappers, boxes, or empties; nor for any goods left until called for, or to order, or left or warehoused for the convenience of the parties to whom they are consigned; *nor for the damage of any package insufficiently or improperly packed,* nor for the loss of any goods or package insufficiently or incorrectly *marked, directed, or described;* nor for damage in package or boxes *containing a variety of articles liable by breaking to damage each other,* nor for loss or injury arising from inherent defect, or the imperfect securing of articles by the sender; nor for leakage, loss, or damage arising from imperfect bunging, bad casks or cooperage; nor for damage to articles, such as marbles, musical instruments, glass furniture, cast iron furniture, or fittings, toys, and other goods of a slight construction; or which from their brittleness, fragility, delicacy, or liability to ignite or perish, are more than ordinarily hazardous unless specially declared and insured, according to value, and the said company further give notice *That no claim for damage will be allowed unless made promptly and without undue delay after the delivery of the goods, nor for loss unless made promptly and without undue delay after the time that they should be delivered.* 6. That no credit can be allowed, excepting by special arrangement; but

all goods must be paid for, either previously to or at the time of delivery; and if payment be refused, any charge for delivery must be also defrayed in addition thereto. If goods are refused to be received by the consignee, for any cause whatever, they will be carried back and re-delivered to the consignor thereof, who will be required to pay the charge for such back carriage and re-delivery. 7. That all goods, from whomsoever received, or to whomsoever belonging shall be subject to a general lieu, not only for the carriage of those particular goods, but also in case of several packages, articles, or things for the carriage of each, and also for any general balance that may be due by the owner, or by the public carriers of such goods to the said Company; and that if, in fourteen days after notice shall have been given that such goods are detained for any claim of the Company, and the money due be not paid, the goods will, at the discretion of the Company, be sold by auction to defray the Company's claims and all expenses incurred thereon; but fish, fruit, and all other perishable articles will be disposed of at the discretion of the Company, immediately after giving the above notice, and without awaiting the above period of fourteen days. 8. That all goods addressed to places within the limits of the Company's local regulations for delivery of goods from different stations on the railway, respecting which no directions to the contrary shall have been received will be delivered by the company at those places. 9. That the delivery of goods will be considered to be complete, and the responsibilities of the company will be considered to terminate, when the goods shall be [*state whether responsibility is to end on arrival at the last station, or at the door of the consignee, &c.*] and that all cellaring or warehousing will be at the owner's risk and expense, as also the removal of the goods from the sender's premises into the agent's cart or waggon. 10. That they will not, under any circumstances, be liable for loss of market or other claim arising from delay or detention of any train, whether in starting or at any of the stations, or in the course of the journey. The company do not undertake to send goods by any particular train, if there be an insufficient number of trucks at the station, or the trucks cannot be conveniently used for the purpose, notwithstanding the goods may have been taken to the station before the time appointed by the company. 11.—That all goods addressed to consignees resident beyond the limits of the company's local regulations for delivery of goods from the different stations on the railway, and respecting which no directions to the company shall have been received previous to the arrival at the station, will be forwarded to their destination by public carrier or other railway, canal, or vessel or otherwise as opportunity may offer, or they will at the discretion of the company by whom they may have been received, be suffered to remain on the company's premises to be placed in shed or warehouse, if there be convenience for receiving the same, pending communication with the consignees, at the risk of the owners, as referred to in

clause No. 4; but that the charges of such carrier will be added to those of the company and the delivery of the goods by the company will be considered as complete, and the responsibility of the company will be considered to have ceased, when such carriers shall have received the goods for further conveyance. And the company hereby give notice that any money which may be received by them as payments for the conveyance of goods by carriers beyond their said limits will be received only for the convenience of the consignors for the purpose of being paid to such other carriers, and will not be received as a charge made by the company upon the goods in the capacity of carriers beyond the extent of their own railway. And the company hereby give further notice, that they will not be responsible for any loss or damage or detention that may happen to goods so sent by them, if such loss, damage, or detention, occur beyond their limits. 12. And in respect of all goods suffered to remain on the company's said premises, or placed in shed or warehouse, or not removed from the company's waggons, whether so remaining by direction of the consignor or consignee, or while waiting the opportunity of further transmission, or until the consignee can receive the same, the company hereby give notice that such goods will, after forty-eight hours from their arrival (except bricks, ashes, coal or coke, and such like mileage goods, which are to be chargeable from twenty-four hours after their arrival,) be subject to the following charges for demurrage:—one day, 3s. 6d.; two days, 8s.; three days, 13s.; Sundays not included in charge, and 7s. per diem addition when exceeding six days. Goods will be warehoused at a reasonable rate at owner's risk, the goods, nevertheless, being so held by the company at the risk of the consignors, or owners thereof. 13. The company will not carry acids in carboys, baskets, (light), boilers (iron), castings (light) chains, furniture, glass (plate), stained goods (light), gunpowder, hats, iron, (wrought and castings), jewellery, joiners' work, lace, lucifer matches, machinery, money, musical instruments, naphtha in carboys, organs, pictures, picture frames, prints or engravings, statuary, straw (manufactured), sulphuric acid, teazels, toys, turpentine in carboys, upholstering, vitriol in carboys, except upon a special agreement, and at the risk of the owners. 14. That the above conditions apply to all goods received by the above named company, at all or any of their offices and warehouses, wherever situated; *and as to all goods entrusted to them, they will only agree to carry them subject to the above conditions.* 15. That the company will not undertake, unless by special agreement, to convey any less number at one time than two beasts, or three calves, or six pigs, or ten sheep, nor will they convey cattle, pigs, or sheep, in any number, for a less distance than miles on their railway, except by special agreement. And they hereby give public notice, that they will not be responsible for any loss, accident, damage, or injury, in respect of any animal, or live stock, or beast of any kind conveyed upon

their railway, whether in the transit, loading, or unloading, or from defective carriages, suffocation, being trampled on, bruised or burnt, or from any other cause whatsoever. The owner or consignor undertaking all risks whatsoever of the conveyance of such animals. 16. Goods *conveyed at special or mileage rates must be loaded and unloaded by the owners or their agents, and the company will not be responsible for any risk of stowage, loss or damage, however caused, not for discrepancy in the delivery as to either quantity, number, or weight, nor for the condition of articles so carried, nor for detention or delay in the conveying or delivery of them, however caused.* 17. That the company will not consent to carry any goods, unless at the time of their being delivered at either of their stations for conveyance a declaration or receiving note be presented to the company's clerk or officer of the station, setting forth the goods according to their correct denominations, their weights and number, and the address of the parties to whom the same are to be delivered; and if any goods shall be untruly or incorrectly declared or described in any such declaration or receiving note, so as to effect the rate to be charged for the carriage thereof, the company will not be responsible for any loss or damage of such goods. 18. In the event of a claim to the articles by a third person, the company shall be at liberty to deliver them to him, if he be the real owner, or if they entertain doubt thereon, the consignor will on request take all risks in reference to the decision, and determination of such claim and the costs thereof, and give to the company, on request, a sufficient and reasonable indemnity, saving the company harmless from all claims in respect to such goods or articles, and from all damages and costs in reference thereto.

INDEX.

A.

PAGE.

Act of God 1, 3
Agreement, special, form of ... ... Appendix xc.

C.

Carriers bound to receive and carry, in what cases ... 2, 4, 5
„ responsibilities of ... ... 1 to 9
Criminals, carrier not bound to receive 5
Circumstances may be considered, not individuals, as to preferences... 27
Carriers Act, protection from 10, 11
Contract and condition difference between 15, 16
„ when to be signed 15, 16, 44
„ „ ... ... Appendix xi.
„ signed effect of ... ... Appendix i.
„ special ... ... Appendix i. to xx.
„ protection by 9, 10
Conditions, reasonable and unreasonable 16, 17, 18
„ „ ... ... Appendix i., vi., viii.
Costs of carrying, circumstances which operate upon, to be considered (see Preference) 24
Coal carriage (see Preference)
Canal Carriers ... ... 46 to 50
Charges of carriers 51
Conditions as to lien 53
Covered Stations, &c. 37
„ ... ... Appendix lxxi.
Collateral gains no ground of preference 29

D.

Distance; carriers liable for whole distance when dangerous goods 5
Drunken persons, carrier not bound to carry ... 5
Diseased " " 5
Deceit practised on carrier 5

PAGE.

Deterioration natural 6
Delivery to Carrier, what is... 7
Detention of train 17
Distances long, ground of preference... ... ... 23, 27
District, arrangement of 30
Disadvantage, undue (see Preference)
Diversion of traffic 39
Damages, what recoverable 12

E.

Evidence of non-delivery, abstraction, &c. 2
Equality of charge and terms to be maintained ... 19, 28, 30, 51
Employment of other lines of company, no ground for preference 29

F.

Fraud on Carrier 5
Felony of Carrier's Servant 11
Facilities due (see Preference) 35, 36, 37

G.

Goods and Passengers, distinction between 3

I.

Interests of Company to be attended to (see Preference)... 23
Inequality of charge and conveniences (see Preference)
Insolvency of consignee 57
Interpleader Act 56

K.

King's Enemies 1, 3

L.

Leakage, when carrier liable for 6
Live Stock 17
Lien 52, 53, 54
Luggage of Passengers 8, 53
Liability—General of Carriers 1
" Limitations of 2
Loss, meaning of term 12

PAGE.

M.

Market, loss of 17

N.

Notice, protection by 9, 10
Negligence, when notice protects against ... 9, 10, 11, 12, 13

O.

Omnibus, right to ply to Station and in Station yards 21, 22
" " ... Appendix xxii, xxvi.
Obstruction of traffic 39

P.

Passengers, distinction between Goods, &c. 2
" Carrier's duties to 4
" Luggage 7, 8, 53
Packing, imperfect 6
Piracies 3
Preferences—Omnibus-right to ply to and in Station ... 21, 22
" " " Appendix xxii. xxvi.
" General principles 22, 23
" " " Appendix xxviii.
" Fair interests of Company to be considered 23
" " " Appendix xxviii.
" Circumstances operating upon cost of carriage 24, 27
" " " Appendix xxix.
" Wish to introduce particular coal into a district, no ground for 24
" " " Appendix xxix.
" To enable landborne to compete with seaborne coal, no ground for 26
" " " Appendix xxvii.
" Nor to prevent opposing schemes ... 26
" " " Appendix xlv.
" Circumstances in some cases to be considered, but not individuals 27
" Quantities, distances, and full train loads may justify inequalities of charge 27, 31
" " " Appendix xxxix.

PAGE

Preference—But even such inequalities must be reasonable ... 28
" Charges between intermediate points, as compared with entire line 28
" " " Appendix liv.
" Charges and conveniences to be impartial as regards individuals 28
" " " Appendix lv.
" Cannot be justified because Customer employs other lines of the Company 29
" " " Appendix lix.
" Districts must not be arranged so as to destroy natural advantages of parties 30
" " " Appendix xxxiv.
" Nor for purposes of preference " xxxiv.
" All scales to be relatively fair, and not for purposes of preference 28, 33
" " " Appendix xliii.
" To goods sent through a particular carrier, improper 33
" " " Appendix lvi.
" An Engineer or Manager will be referred to by Court, if necessary, to ascertain fairness of graduated charges, or preferential terms ... 33
" " " Appendix xlii.
" Separate packages and packed parcels... 34
" " " Appendix xix. xx.
" As to unloading for one and not for another 34
" " " Appendix lxii.
" Company cannot give preferences to itself in a separate trade 34, 43
" " " Appendix li.
" Equality to branches 37
" Equality to uniting lines 39
" Amongst companies to each other ... 39, 40, 41
" Ground to justify distinctions amongst companies 42
" To buy off or meet opposing schemes not justifiable ... ... Appendix xlv.
" Carriage from station to station not to be same as when delivered to consignee ... Appendix lxv.
" Collateral gains, no ground for 29
" As to covered stations ... Appendix lxxi.

PAGE.

Packages and packed parcels 51, 52

Q.

Quantities large, ground of preference 23, 27

R.

Railway Companies common carriers, when ... 1
Responsibility of carriers 1, 2, 3, 4, 5
Robberies 3
Routes, shortest 43, 44
Remuneration of Carrier 51, 52
Room, want of 4
Refusals to carry 4

S.

Special limits of liability 2
Special contract, unreasonable, cannot be forced on employer 2
Special Contracts, when to be signed 15, 16, 44
" " protection by 9, 10
" " and condition, difference between ... 15
" " reasonable, what 16, 17, 18
" " unreasonable 18
" " " ... ... Appendix i. to xxi.
Special carriers for hire, not to be sued as common carriers lxxiv
Snow Storm, delay from 3
STATUTES, viz.—
Railway and Canal Traffic Act... ... Appendix lxxv.
Carriers Act 1 William 4 ... ... lxxix.
8 and 9 Vic. Cap. 42 ... ... lxxxiv.
8 and 9 Vic. Cap. 28 ... ... lxxxv.
Stoppage in transitu 56

T.

Terms unreasonable, cannot be demanded ... 2
Traffic Act (protection by) 12, 13, 14, 15
Train loads, full and regular, grounds of preference... 31
Terminus, liability beyond 1

PAGE.

Truck defective 17
" " " Appendix viii.
Title adverse, how carrier affected by claims of ... 55, 56, 57
Thro' trains and thro' booking only ordered where public convenience proved to require it 36
" " " ... ... Appendix lxvii.

U.

Undue advantage, &c., see Preference.
Usage as to lien 53

V.

Vermin, carrier liable for damage, by 6
Value, declaration of, under Carriers' Act ... 10, 11
" " under Traffic Act 15
Water carriers 46, 47, 48

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